

The Islamic Republic of Iran Before the World:

**International Avenues for Pursuing
Accountability for Human Rights
Violations in the Islamic Republic of Iran**



Lisandra Novo, Celeste Kmiotek, Elise Baker, and Gissou Nia



Through advising on legal tools and impact litigation, the **Atlantic Council's Strategic Litigation Project** works on accountability efforts for atrocity crimes, human rights violations, terrorism and corruption offenses.



Atlantic Council

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Executive Summary and Recommendations

The tragic death of Mahsa Jina Amini, a twenty-two-year-old Kurdish-Iranian woman arrested by the Islamic Republic of Iran’s (IRI) infamous morality police in September 2022 for allegedly defying the state’s mandatory hijab laws, has introduced urgency into a conversation about what justice options are available for Iranians victimized by their government. While Iranians have been dealing with grave human rights violations for decades, the senselessness of Amini’s death at the hands of the IRI’s morality police—for perhaps showing a few strands of hair—brought the brutality of the IRI’s discriminatory legal framework against women, girls, and other marginalized populations into clear focus for the globe. Amini’s death sparked waves of massive protests throughout Iran, animated by the slogan “woman, life, freedom”—which has served as a rallying cry for Iranians inside Iran and in the diaspora. It is a cry of resistance against the state and of a desire to hold IRI officials accountable for atrocity crimes and human rights violations.

The IRI’s response to dissent has been a brutal crackdown on peaceful protesters, including internet shutdowns, excessive use of force, arbitrary arrests and detentions, sexual and gender-based violence, torture, enforced disappearances, summary trials, and even executions. Since the start of the protests in September 2022, more than fifty executions have taken place, roughly five hundred civilians have been killed in protests, and nearly twenty-thousand have been detained. Additionally, there are reports of mass poisonings of schoolgirls across the country—the same schoolgirls seen bravely defying the state’s mandatory hijab laws and calling for an end to the dictatorship in viral videos on social media platforms.

The abuses of the state have left Iranians looking for internationalized responses to their plight. The judiciary in Iran is not independent, nor impartial, and is deeply influenced by state security forces and the intelligence apparatus. Therefore, domestic avenues for accountability in the Islamic Republic’s courts are not reliable for victims. Countries around the world have responded in a range of ways, including via diplomatic channels and through the issuance of targeted sanctions against individuals and entities for gross human rights violations in Iran. However, many options for justice remain underused or unexplored. To date, only one criminal trial against a representative of the Islamic Republic for core international crimes has taken place under

the universal jurisdiction principle. National jurisdictions that have universal jurisdiction frameworks or laws with extra-territorial application can invest more heavily in holding IRI perpetrators of atrocity crimes and human rights violations to account. The Atlantic Council’s Strategic Litigation Project explored civil-litigation options in national courts to hold IRI perpetrators accountable in a 2020 report, and will address further justice options in Europe and Canada in reports due to be published in fall 2023 and winter 2024.¹

In addition to national measures that provide important tools in the fight against impunity, international forums and mechanisms can be used to pursue accountability for these violations. Some of these options were pursued in fall 2022, including the establishment of a United Nations fact-finding mission on Iran in November 2022 and a successful global campaign to remove the Islamic Republic from the United Nations Commission on the Status of Women in December 2022.

To put international mechanisms and avenues in context and to shed light on how they may apply to Iran, as well as to illustrate any limitations, the Atlantic Council’s Strategic Litigation Project has authored this report, which aims to provide an overview of, and recommendations relating to, further international options that can be used to pursue accountability for human rights violations committed in Iran. The research in this report is based on the experiences and legal practice of the authors, extensive desk research, and consultations with practitioners, victims, and survivors of violations.

The different avenues covered in this report were selected by considering the treaties that have been ratified by Iran, international courts that do or could have jurisdiction over the IRI or relating to violations that take place in Iran, different mechanisms available in which the IRI participates under the United Nations (UN) and other international organizations, and mechanisms designed specifically to address issues in Iran. Lastly, this report looks to the future and highlights current developments in international law that, if successful, could provide new avenues for accountability. The specific courts, mechanisms, and developments covered in this report are the following: the International Criminal Court; the International Court of Justice; international people’s tribunals; the United Nations Human Rights Council; UN Special Rapporteurs; the Working Group on

¹ Gissou Nia, *Closing the Accountability Gap on Human Rights Violators in the Islamic Republic of Iran through Global Litigation Efforts*, Atlantic Council, December 10, 2020, <https://www.atlanticcouncil.org/in-depth-research-reports/report/closing-the-accountability-gap-on-human-rights-violators-in-the-islamic-republic-of-iran-through-global-litigation-strategies/>.

Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; UN investigative bodies and mechanisms in general and the Independent International Fact-Finding Mission on the Islamic Republic of Iran; the Organisation for the Prohibition of Chemical Weapons; the Mutual Legal Assistance and Extradition Initiative; the Draft Articles on Crimes Against Humanity; and, recent efforts to expand the definition of the crime against humanity of apartheid to include gender.

This effort resulted in the following recommendations for states and civil society.

Recommendations

Relating to the International Criminal Court (ICC)

- The Office of the Prosecutor (OTP) should open a preliminary examination focusing on the role of the Islamic Republic of Iran and the Islamic Revolutionary Guard Corps (IRGC) in transboundary crimes in the Syrian conflict and consider any evidence on the responsibility for Rome Statute crimes of the IRI, IRGC, and groups under their control in all open preliminary examinations and investigations.
- States parties to the Rome Statute should refer situations to the court involving the commission of crimes by Iranian officials in their territory that fall under the court's jurisdiction.
- Because states parties to the Rome Statute do not need a connection to Rome Statute crimes committed within their knowledge, they should refer situations to the court involving the commission of Rome Statute crimes where jurisdiction applies, such as certain crimes in Syria involving Iran and crimes committed by the IRI on the territory of Ukraine and in the case of Flight PS752.²

- States parties should cooperate with the court in investigating matters concerning Iran.
- Civil-society organizations should file Article 15 communications with the OTP when there is jurisdiction, because part of the crime has been committed on the territory of a state party or of a state that has accepted the court's jurisdiction.
- Civil-society organizations should investigate transboundary elements of crimes committed by Iranian officials to ascertain whether the ICC would have jurisdiction in assessing whether to submit information.

Relating to the International Court of Justice (ICJ)

- To support the joint application filed by Canada, Sweden, Ukraine, and the United Kingdom on July 5, 2023, instituting proceedings under the 1971 Montreal Convention at the ICJ against the IRI for the PS752 shutdown, other interested states should file an Article 63 declaration of intervention. This is similar to what has been done, on an unprecedented scale, in support of Ukraine in *Ukraine v. Russia*.³ Currently, there are 188 parties to the Montreal Convention.⁴ Any of these could file a declaration of intervention to submit their views on the interpretation of any provisions of the convention at issue in the case.⁵
- Following the precedent set by *The Gambia v. Myanmar*, in which the ICJ confirmed that for a treaty like the Genocide Convention, all states parties have a "common interest" in compliance with its obligations, and states parties to conventions like the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention against Discrimination in Education could initiate proceedings over violations of obligations owed by the IRI under these and other applicable conventions.⁶

2 Note that in the Venezuela situation, for example, six states parties made a referral to the court, including Argentina, Canada, Colombia, Chile, Paraguay, and Peru, despite having no direct connection to the situation or crimes in Venezuela. See: "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Referral by a Group of Six States Parties Regarding the Situation in Venezuela," International Criminal Court, September 27, 2018, <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-referral-group-six-states>.

3 A record number of thirty-three states intervened in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia)* before the ICJ, the highest number of interventions in the court's history. See: Kyra Wigard, Ori Pomson, and Juliette McIntyre, "Keeping Score: An Empirical Analysis of the Interventions in *Ukraine v. Russia*," *Journal of International Dispute Settlement*, May 31, 2023, <https://doi.org/10.1093/jnlids/idad011>.

4 "List of Parties to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation Signed at Montreal on 23 September 1971," International Civil Aviation Organization, last visited June 5, 2023, https://www.icao.int/secretariat/legal/List%20of%20Parties/MtI71_EN.pdf.

5 Statute of the International Court of Justice, Article 63 ("1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith. 2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.").

6 See, e.g.: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Preliminary Objections, Judgment, ICJ, July 22, 2022, paragraphs 106–114, <https://www.icj-cij.org/public/files/case-related/178/178-20220722-JUD-01-00-EN.pdf>.

Relating to International People's Tribunals

- Civil society should continue to convene international people's tribunals (IPTs) for situations in which justice is lacking and victims have not been heard, coordinating among the tribunals where appropriate.
- IPTs must engage in best practices to protect victims and to ensure that the evidence gathered can be used in subsequent proceedings—for example, by using trauma-informed interviewing techniques, by following best practices for the collection and preservation of evidence, and by mandating that a defense is presented.
- States should engage and cooperate with IPTs, including states being examined by the IPTs.
- IPTs must also ensure that due process and fair-trial rights are respected, especially when the accused do not appear or participate.
- The UN Office of the High Commissioner for Human Rights, and other relevant UN bodies and interested parties, should work to develop a convention with guidelines for IPTs in order to encourage and standardize their use, ensuring that victims are protected and that evidence can be preserved and used in other contexts.
- Jurisdictions—including both domestic and international jurisdictions—must investigate crimes raised in IPTs, and should use the evidence gathered during the hearings where they are able and where it is appropriate.
- The UN must support IPTs and engage with them to further their work in accountability—for example, by issuing reports from Special Rapporteurs on the relevant subjects.
- All subjects of IPT recommendations must implement the recommended actions where they are able.

Relating to the United Nations Human Rights Council

Human Rights Council Membership and Leadership Positions

- Human Rights Council (HRC) member states must decline to vote for membership of states that do not meet the HRC's requirements for upholding human rights. Recognizing that most states have imperfect human rights records, this exclusionary standard should apply

to member states that are extreme outliers in committing atrocity crimes and gross human rights violations. When member states commit atrocity crimes and gross human rights violations in a sustained and unrepentant manner, the General Assembly must vote to remove them. Such states should not hold leadership positions at a UN body whose mission is to promote and protect human rights around the world.

- HRC member states must take a more proactive role during the nomination and appointment process of bodies under the HRC umbrella, like the Social Forum, to avoid appointing the representatives of states responsible for grave human rights violations to leadership roles.

Universal Periodic Review

- Civil-society organizations should send stakeholder submissions for the fourth cycle of the Universal Periodic Review (UPR) concerning Iran before June 27, 2024.
- The HRC must continue to prioritize the implementation of recommendations and should consider, for example, publishing regularly updated and detailed monitoring information.
- Stakeholders, including both member states and external organizations, must continue to give careful attention to the information they provide ahead of each state's review to ensure that all relevant information is available. They must also ensure that they continue to urge states to accept the recommendations of their reviews.
- During its review in the fourth cycle, the IRI must commit to accepting all recommendations and fully implement those recommendations immediately afterward. In the preceding years, it should implement any remaining recommendations from the third cycle, including recommendations it previously rejected.

Relating to United Nations Special Rapporteurs

- While it is imperative that UN Special Rapporteurs maintain their independence, the United Nations must ensure that each mandate is properly staffed and funded so that the Special Rapporteurs are able to robustly carry out their duties, particularly when faced with challenging situations and uncooperative governments.
- The government of the IRI must cooperate with Special Rapporteurs, including by immediately

allowing country visits for all who request them. Special Rapporteurs, in turn, must devote adequate time and energy to situations in Iran, despite the ongoing lack of cooperation.

- Special Rapporteurs should continue to collaborate with one another, along with other relevant bodies—including, *inter alia*, the Working Group on Arbitrary Detention, Working Group on Enforced Disappearances, and the Independent Fact-Finding Mission on the Islamic Republic of Iran—to ensure that they are unified on messaging, to avoid the duplication of efforts, and to lend their expertise wherever possible.
- Special Rapporteurs should continue to shed light on human rights violations in Iran as much as possible by publishing relevant reports, as well as through concerted efforts to speak out against new developments and a sustained media presence on the overall situation.

Relating to the Working Group on Arbitrary Detention

- Those submitting allegations should highlight how cases relate to and support previous Working Group on Arbitrary Detention (WGAD) findings on ongoing patterns, as well as unique details, particularly as they relate to new or emerging patterns.
- Those submitting legal documents should take care to note the WGAD’s findings and use them as supporting evidence in other legal submissions.
- Where the WGAD identifies patterns such as potential crimes against humanity in a specific country or novel forms of arbitrary detention, it should raise the issue in a separate report and identify ways within its mandate to escalate the issue beyond UN experts.⁷
- The WGAD should establish a clear and consistent protocol for addressing reports of noncompliance with recommendations within the WGAD’s determinations.
- The WGAD should establish protocols to address instances in which countries are repeatedly uncooperative in providing information, in implementing recommendations, and in allowing country visits.

- To further incentivize cooperation, the WGAD should work with nongovernmental organizations (NGOs) to track the status and outcomes of cases.
- The WGAD should continue to invest in its publicly accessible database, clean the data to make them easier to sort and filter, thus allowing for more comprehensive data analysis, and track additional categories such as whether individuals have been released or the outcome of cases.

Relating to the Working Group on Enforced or Involuntary Disappearances

- For enforced disappearances reported less than three months after they began, civil-society organizations should assist families of victims by submitting reports to the Working Group on Enforced or Involuntary Disappearances (WGEID) under the urgent-procedure option and by maintaining communication throughout the process.
- For enforced disappearances reported three months or more after they began, relatives of the disappeared persons and organizations assisting them should make use of the standard procedure.
- The WGEID should submit urgent appeals relating to all credible reports of enforced disappearances in Iran.
- The WGEID should join other mechanisms, such as the Special Rapporteur on Iran, to issue a joint communication regarding both the latest and historical enforced disappearances in Iran.
- The WGEID should make the form to submit a report concerning an enforced disappearance available in more languages. The form only being available in English, French, or Spanish greatly limits the number of families that could make a report on their own, which forces families to seek assistance from an organization.

Relating to the Independent International Fact-Finding Mission on the Islamic Republic of Iran (FFMI)

- The FFMI team should engage the Iranian public on the mandate and ensure it has access to the FFMI’s

⁷ For example, hostage taking. See: “Unprecedented Second Complaint to the UN Seeks Urgent Intervention for Nazanin Zaghari-Ratcliffe,” REDRESS, press release, August 6, 2021, <https://redress.org/news/unprecedented-second-complaint-to-the-un-seeks-urgent-intervention-for-nazanin-zaghari-ratcliffe/>.

public findings. This could be done by, among other things, hiring a public-information officer whose tasks include accurately explaining the mandate and operations of the FFMI, as well as publicizing any developments.

- Investigators and prosecutors building cases against Iranian perpetrators should seek out information and evidence collected by the FFMI. The FFMI should support accountability efforts to the furthest extent allowed under its mandate, including by providing information and evidence to competent, rights-respecting jurisdictions.
- HRC member states should extend the mandate of the FFMI beyond March 2024 to ensure that it has sufficient time to document the ongoing human rights violations that have occurred since September 2022. Further, HRC member states should consider expanding the mandate of the FFMI to violations that occurred prior to September 2022, to increase the prospect of accountability for other human rights violations in the IRI.
- Once the FFMI's mandate is concluded, UN member states should consider establishing a commission of inquiry like that established for the situation in Ukraine and/or an investigative mechanism like the Independent Investigative Mechanism for Myanmar (IIMM). Any additional investigative body or mechanism established should have a particular view to end impunity and ensure accountability, including individual criminal responsibility and access to justice for victims. Such a structure and mandate would allow for the identification of mid- to lower-level perpetrators, in addition to those most responsible at the highest level.

Relating to the Organisation for the Prohibition of Chemical Weapons

- Marshall the resources of the Organisation for the Prohibition of Chemical Weapons (OPCW) to investigate the allegations of mass poisonings of Iranian schoolgirls from November 2022 to the present day.
- Given the OPCW's strong preference for first seeking clarification from the state party where a situation of concern has arisen, states parties to the Chemical Weapons Convention (CWC) could first directly reach out to the IRI to request information concerning the schoolgirl poisonings. However, such states should bear in mind the IRI's history of denial, silencing victims and journalists, and the ineffective investigation it has already carried out on this matter. Rather than

simply seeking information from the IRI, states parties wishing to engage directly with it could instead try to arrange an inspection or investigation to be conducted by an independent third party by mutual consent.

- States parties not wishing to engage directly with the IRI for the aforementioned reasons can instead request that the OPCW Executive Council provide any information it already holds. If that does not suffice, they can request that the OPCW Executive Council seek clarification from the IRI. Despite the IRI's role on the council, it does not have veto power and cannot block decisions, as these are taken by either a two-thirds majority or a simple majority.
- States wishing to bypass the OPCW Executive Council clarification process altogether can directly request a challenge inspection anywhere on Iranian territory. They do not need to first seek clarification. They must, however, carefully frame the request to ensure it falls within the scope of the CWC, and provide all the information at their disposal that indicates noncompliance. Any inspection carried out by the team the director-general designates will be strictly limited to establishing the facts surrounding the possible noncompliance with the Chemical Weapons Convention.
- Lastly, any state party can put the issue of the schoolgirl poisonings on the agenda for the next regular session of the Conference of the States Parties scheduled to take place in The Hague from November 27 to December 1, 2023. Any state party can also request a special session of the Conference of States Parties, which will be convened if one-third of the member states support the request. The Conference of the States Parties has broad powers, and can discuss the matter and make recommendations for how to move forward.

Relating to International Treaties and Law Currently Under Development

Ljubljana-Hague Convention

- States should sign and ratify the Ljubljana-Hague Convention without reservations. If the convention becomes binding, it will be the first multilateral treaty ever to deal with mutual legal assistance for national prosecutions of international crimes, which will aid in bringing IRI perpetrators to justice.
- Additionally, at the time of ratification or acceptance, states should voluntarily extend the scope of the

application of the Ljubljana-Hague Convention to cover crimes like torture or enforced disappearances, to ensure other prosecutions of other serious international crimes also benefit from this convention.

- States should take measures necessary to establish jurisdiction over cases where the victim of a covered crime is a national; that is, to establish passive personality jurisdiction. The IRI targets dual nationals and foreign nationals, and this jurisdiction would allow states to protect their nationals even when they are the victims of crimes outside their territory.⁸
- Should the treaty be ratified, states parties should comply with their obligations to prosecute or extradite perpetrators from the IRI suspected of having committed the covered crimes in good faith, and not abuse the discretion included in the final draft to avoid politically difficult cases.

Crimes Against Humanity Treaty

- States should close a global legal gap by adopting an international treaty specifically addressing crimes against humanity, to join other important global treaties addressing atrocity crimes such as genocide, war crimes, and torture.
- States can do this by accepting the International Law Commission's (ILC) recommendation to develop a treaty based on the draft articles on prevention and punishment of crimes against humanity (CAH Draft Articles), which the ILC adopted in 2019.
- The definition of the crime against humanity of enforced disappearance in the CAH Draft Articles should be revised to match the definition included in the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which does not require a specific duration of time nor an intention to

remove a disappeared person from the protection of law enforcement. These requirements unduly narrow the definition of this crime, and are not in line with the ICPPED.

- The definition of the crime against humanity of forced pregnancy should be revised to remove the caveat that exempts national laws, as it is the only crime for which such a caveat is included. This kind of caveat permits discrimination against women to continue when codified under national legislation.

Codifying Gender Apartheid

- UN member states should accept the recommendation from Special Rapporteur on human rights in Afghanistan Richard Bennett and the Working Group on discrimination against women and girls, and mandate a report on the question of gender apartheid with a view to develop legal norms for the international community.
- Other avenues for developing legal norms around the crime of gender apartheid should be pursued, such as adding it to the work of the International Law Commission and including the crime in the CAH Draft Articles.
- States should incorporate the rights of women and girls, and the dismantling of the regimes of gender apartheid, into their foreign policy approaches toward the IRI and the Taliban in Afghanistan.
- States should incorporate the crime of gender apartheid into domestic legislation.
- Civil society should continue to document the acts constituting gender apartheid and push their national representatives to take action.

8 See, e.g.: "Iran: Targeting of Dual Citizens, Foreigners," Human Rights Watch, September 26, 2018, <https://www.hrw.org/news/2018/09/26/iran-targeting-dual-citizens-foreigners>; Nadeen Ebrahim, "How Dual Nationals Became Pawns in Iran's Fight with the West," CNN, March 21, 2022, <https://edition.cnn.com/2022/03/21/middleeast/mideast-summary-03-21-2022-intl/index.html>.

Introduction

The IRI's massive crackdown and numerous human rights abuses against peaceful protesters and dissidents in the context of the women-led movement in response to Amini's death in September 2022 is not a new tactic.⁹ With respect to the November 2019 anti-regime protests sparked by fuel-price increases, IRI security forces killed more than three hundred people, including children, and arrested thousands, and the IRI enacted a nationwide internet shutdown.¹⁰ Since the start of the current protests in September 2022, IRI forces have killed more than five hundred people, including more than seventy children, and arrested more than twenty thousand.¹¹ Reports indicate that women are being specifically targeted by security forces, including female journalists in Iran covering the protests, and many of these women have been subjected to sexual violence by security forces while in transit to and in detention.¹² There are also reports of security forces unlawfully killing, forcibly disappearing, or using excessive force against children in connection with

the protests, as well as subjecting children in detention to torture, rape, and other sexual violence.¹³ More than 1,200 schoolgirls across Iran are reported to have been deliberately poisoned in attacks that began only weeks after the protests sparked by Amini's death began.¹⁴ The UN Special Rapporteur on the situation of human rights in Iran characterized the recent violence and human rights violations committed by the IRI as the most serious to have occurred in Iran in the last forty years, and indicated that these abuses could amount to crimes against humanity.¹⁵

The judiciary cannot be relied on to address such crimes and abuses perpetrated by the IRI, as the law itself often enshrines discrimination, as has been the case with respect to women, ethnic and religious minorities, and other marginalized groups since the establishment of the IRI in 1979.¹⁶ Further, the legal system and the judiciary are instrumentalized by the regime in its efforts to quash dissent.¹⁷ There are extensive reports as to the lack of

- 9 See, e.g.: Nia, *Closing the Accountability Gap on Human Rights Violators in the Islamic Republic of Iran through Global Civil Litigation Strategies*, 3–4, 7–8, https://www.atlanticcouncil.org/wp-content/uploads/2020/12/Civil-Litigations-2020-Report_.pdf; “Did You Know? Timeline of Violent Suppression of Protests in Iran,” IranWire, November 28, 2022, <https://iranwire.com/en/politics/110511-did-you-know-timeline-of-violent-suppression-of-protests-in-iran/>; Miriam Berger, “What’s Behind the Protests in Iran?” *Washington Post*, September 22, 2022, <https://www.washingtonpost.com/world/2022/09/22/iran-protests-mahsa-amini-death/>.
- 10 “Iran: Experts Raise Alarm at Arrests and Reported Killings, Internet Shutdown,” United Nations Office of the High Commissioner for Human Rights, press release, November 22, 2019, <https://www.ohchr.org/en/press-releases/2019/11/iran-experts-raise-alarm-arrests-and-reported-killings-internet-shutdown/>; “Iran: Thousands Arbitrarily Detained and at Risk of Torture in Chilling Post-Protest Crackdown,” Amnesty International, December 16, 2019, <https://www.amnesty.org/en/latest/press-release/2019/12/iran-thousands-arbitrarily-detained-and-at-risk-of-torture-in-chilling-post-protest-crackdown/>; “Iran: Trampling Humanity—Mass Arrests, Disappearances and Torture since Iran’s 2019 November Protests,” Amnesty International, September 2, 2020, [https://www.amnesty.org/en/documents/mde13/2891/2020/en/#:~:text=In%20response%20to%20nationwide%20protests%20in%20November%202019%2C,of%20more%20than%207%2C000%20men%2C%20women%20and%20children](https://www.amnesty.org/en/documents/mde13/2891/2020/en/#:~:text=In%20response%20to%20nationwide%20protests%20in%20November%202019%2C,of%20more%20than%207%2C000%20men%2C%20women%20and%20children;); “Iran: No Justice for Bloody 2019 Crackdown,” Human Rights Watch, November 17, 2020, <https://www.hrw.org/news/2020/11/17/iran-no-justice-bloody-2019-crackdown/>; “Iran: Details of 321 Deaths in Crackdown on November 2019 Protests [July 2022 Update],” Amnesty International, July 29, 2022, <https://www.amnesty.org/en/documents/mde13/2308/2020/en/>.
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- 12 Feranak Amidi, “Iran Protests: Female Journalists Targeted in Spate of Arrests,” BBC, February 16, 2023, <https://www.bbc.com/news/world-middle-east-64584265>; Robert Greenall, “Iran Protests: Activist Narges Mohammadi Details ‘Abuse’ of Detained Women,” BBC, December 24, 2022, <https://www.bbc.com/news/world-middle-east-64084709>; Maryam Sinaee, “Detained Victims In Iran Share Harrowing Stories Of Sexual Assault,” Iran International, December 27, 2022, <https://www.iranintl.com/en/202212279992>; Feranak Amidi, “Iran Protests: Jailed Activist Sepideh Qolian Describes Brutality in Letter,” BBC, January 11, 2023, <https://www.bbc.com/news/world-middle-east-64225902>; Deepa Parent and Ghoncheh Habibiazad, “They Used Our Hijabs to Gag Us’: Iran Protesters Tell of Rapes, Beatings and Torture by Police,” *Guardian*, February 6, 2023, <https://www.theguardian.com/global-development/2023/feb/06/iran-protesters-police-rapes-beatings-and-torture>.
- 13 Farnaz Fassihi, “Stymied by Protests, Iran Unleashes Its Wrath on Its Youth,” *New York Times*, November 14, 2022, <https://www.nytimes.com/2022/11/14/world/middleeast/iran-protests-children.html>; “Iran: Child Detainees Subjected to Flogging, Electric Shocks and Sexual Violence in Brutal Protest Crackdown,” Amnesty International, March 16, 2023, <https://www.amnesty.org/en/latest/news/2023/03/iran-child-detainees-subjected-to-flogging-electric-shocks-and-sexual-violence-in-brutal-protest-crackdown/>; “Iran: Security Forces Kill, Torture, Abuse Children,” Human Rights Watch, April 25, 2023, <https://www.hrw.org/news/2023/04/25/iran-security-forces-kill-torture-abuse-children>.
- 14 “Iran: Deliberate Poisoning of Schoolgirls Further Evidence of Continuous Violence against Women and Girls,” United Nations Office of the High Commissioner for Human Rights, press release, March 16, 2023, <https://www.ohchr.org/en/press-releases/2023/03/iran-deliberate-poisoning-schoolgirls-further-evidence-continuous-violence/>; Michael Page, “Iranian Media Reports Hundreds of Schoolgirls Poisoned,” Human Rights Watch, March 2, 2023, <https://www.hrw.org/news/2023/03/02/iranian-media-reports-hundreds-schoolgirls-poisoned>.
- 15 “Iran: Possible Crimes against Humanity, Absence of Accountability—Top Rights Expert,” *UN News*, March 20, 2023, <https://news.un.org/en/story/2023/03/1134782>.
- 16 See, e.g.: Nia, *Closing the Accountability Gap on Human Rights Violators in the Islamic Republic of Iran through Global Civil Litigation Strategies*, 3.
- 17 See, e.g.: “World Report 2023: Iran Events of 2022,” Human Rights Watch, 2023, <https://www.hrw.org/world-report/2023/country-chapters/iran>.

independence and impartiality within the judiciary, and evidence of gross violations of the fair trial and due process rights at a systematic level.¹⁸ Since the start of the current protests, numerous protesters have been subjected to summary trials and sentenced to death, so-called confessions were obtained after clear indications of torture, and, as of the time of report publication, at least seven men have been executed in connection to the protests.¹⁹ The UN has highlighted the alarming number of executions carried out in Iran this past year, the majority related to drug offenses, with at least 209 executions conducted between January and May 2023 alone.²⁰ According to the UN and other rights groups, ethnic minorities have been disproportionately targeted through these executions.²¹ UN experts recalled that any death sentence carried out in contravention of a state's international legal obligations amounts to an arbitrary execution.²²

Given the difficulty in pursuing justice and accountability domestically, many victims and survivors have sought out other pathways for justice in foreign jurisdictions and international tribunals and mechanisms.²³ As this report

outlines, there are several possibilities at the international level to pursue accountability for abuses committed in Iran. Options include taking advantage of existing mechanisms, such as the submission of an Article 15 communication to the Office of the Prosecutor at the International Criminal Court, or creating new international mechanisms, such as the UN Human Rights Council's creation of a new fact-finding mission dedicated to investigating human rights abuses committed in Iran in relation to the September 2022 protests.²⁴

This report examines opportunities to seek accountability at the international level for the human rights abuses and crimes committed by the IRI, including avenues available at international tribunals and mechanisms as they relate to the context of the IRI, its officials, and its proxies. The research in this report is based on the experiences and legal practice of the authors, extensive desk research, and consultations with practitioners, as well as victims and survivors of violations, carried out between January 2022 and June 2023. The sections herein contain an overview of, and recommendations relating to: multilateral

- 18 See, e.g.: "2022 Country Reports on Human Rights Practices: Iran," US Department of State, Bureau of Democracy, Human Rights, and Labor, March 28, 2023, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/iran/>; "No Prosperity without Justice: the UK's Relationship with Iran," UK Parliament, December 16, 2020, <https://publications.parliament.uk/pa/cm5801/cmselect/cm5801/415/41506.htm#footnote-074>; "Iran: A Legal System that Fails to Protect Freedom of Expression and Association," Amnesty International, December 21, 2001, <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde130452001en.pdf>.
- 19 See, e.g.: "Iran: Death Sentences against Protesters (Two Executed in Apparently Grossly Unfair Trials, Several More in Danger)," Human Rights Watch, December 13, 2022, <https://www.hrw.org/news/2022/12/13/iran-death-sentences-against-protesters>; "Joint Statement of the Foreign Ministers of Australia, Canada and New Zealand on the Execution of Protesters in Iran," Minister for Foreign Affairs Senator the Honorable Penny Wong, press release, December 16, 2022, <https://www.foreignminister.gov.au/minister/penny-wong/media-release/joint-statement-foreign-ministers-australia-canada-and-new-zealand-execution-protesters-iran>; "Iran: UK Responds to Executions of Protesters," GOV.UK, January 7, 2023, <https://www.gov.uk/government/news/iran-uk-responds-to-executions-of-protesters>; Parisa Hafezi, "Iran Sentences Three More Protesters to Death Amid International Criticism," Reuters, January 9, 2023, <https://www.reuters.com/world/middle-east/iran-sentences-three-more-protesters-death-amid-international-criticism-2023-01-09/>; Parisa Hafezi, "Analysis: Iran Executions Quash Protests, Push Dissent Underground," Reuters, January 10, 2023, <https://www.reuters.com/world/middle-east/iran-executions-quash-protests-push-dissent-underground-2023-01-10/>; Farnaz Fassihi and Cora Engelbrecht, "The People Executed or Sentenced to Death in Iran's Protest Crackdown," *New York Times*, January 12, 2023, <https://www.nytimes.com/article/iran-protests-death-sentences-executions.html>; Didier Reynders, "EP Plenary: The EU's Response to the Protests and Executions in Iran," Diplomatic Service of the European Union, January 17, 2023, https://www.eeas.europa.eu/eeas/ep-plenary-eu%E2%80%99s-response-protests-and-executions-iran_en; Maryam Afshang, "Iran Protests: 15 Minutes to Defend Yourself against the Death Penalty," BBC, January 18, 2023, <https://www.bbc.com/news/world-middle-east-64302726>; Parisa Hafezi, "Iran's 'Death Committee' President Unyielding in Defence of Clerical Rule," Reuters, January 18, 2023, <https://www.reuters.com/world/middle-east/irans-death-committee-president-unyielding-defence-clerical-rule-2023-01-17/>; "Iran: IBAHRI Calls for Stop to Planned Executions and Sham Trials and for UN Investigation into 'Suicides,'" International Bar Association, February 1, 2023, <https://www.ibanet.org/Iran-IBAHRI-calls-for-stop-to-planned-executions-and-sham-trials-and-for-UN-investigation-into-suicides>; Miriam Berger, "Three Protesters Face Death in Iran, in Year of More than 200 Executions," *Washington Post*, May 17, 2023, <https://www.washingtonpost.com/world/2023/05/17/iran-protests-executions-prisoners/>; "More Executions of Protesters in Iran Imminent after Sham Trials," Center for Human Rights in Iran, May 17, 2023, <https://iranhumanrights.org/2023/05/more-executions-of-protesters-in-iran-imminent-after-sham-trials/>; Rob Picheta and Irene Nasser, "Iran Condemned after Executing Three Men over Recent Protests," CNN, May 19, 2023, <https://www.cnn.com/2023/05/19/middleeast/iran-executions-protests-intl/index.html>; "UN Rights Experts 'Deeply Alarmed' at Continuing Executions of Iran Protesters," *UN News*, May 19, 2023, <https://news.un.org/en/story/2023/05/1136852>.
- 20 "Iran: Over 200 Executed since January; Türk Calls for End to Death Penalty," *UN News*, May 9, 2023, <https://news.un.org/en/story/2023/05/1136497>; "Iran: UN Experts Condemn Recent Executions, Urge Moratorium on Death Penalty," United Nations Office of the High Commissioner for Human Rights, press release, May 9, 2023, <https://www.ohchr.org/en/press-releases/2023/05/iran-un-experts-condemn-recent-executions-urge-moratorium-death-penalty>.
- 21 "Iran: Over 200 Executed since January"; "Iran: Alarming Surge in Executions," Human Rights Watch, May 12, 2023, <https://www.hrw.org/news/2023/05/12/iran-alarming-surge-executions>; "Death Sentences and Executions 2022," Amnesty International, 2023, 31, <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.
- 22 "Iran: UN Experts Condemn Recent Executions, Urge Moratorium on Death Penalty."
- 23 See, e.g.: Celeste Kmiotek, Alana Mitias, and Nushin Sarkarati, *Holding the Islamic Republic of Iran Accountable for Atrocity Crimes*, Atlantic Council, April 19, 2023, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/holding-the-islamic-republic-of-iran-accountable-for-atrocity-crimes/>; "Hamid Noury," TRIAL International, April 17, 2023, <https://trialinternational.org/latest-post/hamid-noury/>; Ghazal Golshiri, "Sweden's Historic Trial of Hamid Noury, Accused of Being a Key Figure in Iran's 1988 Executions," *Le Monde*, May 4, 2022, https://www.lemonde.fr/en/international/article/2022/05/04/sweden-s-historic-trial-of-hamid-noury-accused-of-being-a-key-figure-in-iran-s-1988-executions_5982444_4.html.
- 24 See: Julian Borger, "'Our Lives Are Destroyed': Families Take Fight for Truth of Flight 752 to ICC," *Guardian*, September 14, 2022, <https://www.theguardian.com/world/2022/sep/14/our-lives-are-destroyed-families-take-fight-for-truth-of-flight-752-to-icc>; "UN Rights Body Launches Iran Human Rights Investigation," *UN News*, November 24, 2022, <https://news.un.org/en/story/2022/11/1131022>.



Exterior view of the International Criminal Court (ICC) in The Hague. Martin Bertrand / Hans Lucas via Reuters Connect

courts, specifically the International Criminal Court and the International Court of Justice; international people's tribunals; United Nations mechanisms, including but not limited to the Human Rights Council and investigative bodies and mechanisms such as the Independent International Fact-Finding Mission on the Islamic Republic of Iran; the

Organisation for the Prohibition of Chemical Weapons; and new developments in international law. This report forms part of a larger series of Atlantic Council publications outlining different mechanisms available under domestic and international law to pursue accountability for human rights abuses and crimes committed by the IRI.²⁵

²⁵ See, e.g.: Nia, *Closing the Accountability Gap on Human Rights Violators in the Islamic Republic of Iran through Global Civil Litigation Strategies*; Kmiołek, et al., *Holding the Islamic Republic of Iran Accountable for Atrocity Crimes*; and a forthcoming publication that will focus on universal and extraterritorial jurisdiction over international crimes in several European countries.

Multilateral Courts

The IRI's lack of membership in international and regional courts poses a challenge to the pursuit of justice options in forums outside Iran. Yet victims, practitioners, and states have been successful in mounting some efforts, and some justice options remain—as of yet—unexplored.

While the IRI has not accepted the jurisdiction of the International Criminal Court, it is a signatory to the Rome Statute and participates actively in full plenary sessions of the Assembly of States Parties, where important decisions regarding the court are made every year. Additionally, just because the IRI is not a state party to the Rome Statute does not put it completely out of the court's reach. This section outlines several ways the ICC could exercise jurisdiction over international crimes committed by the IRI.

A different court has jurisdiction over the IRI in certain cases: the International Court of Justice. The ICJ is not a criminal court. Rather, its role is to determine whether states have violated specific legal obligations. This does not mean the ICJ does not have a role to play in accountability for gross human rights violations. One need only look at its jurisprudence in cases relating to genocide, for example, to see the impact the ICJ has, as the world's court, in accountability matters and the development of international legal norms and standards.

International Criminal Court

The ICC is the world's first permanent international court dedicated to fighting impunity for the most serious crimes of international concern.²⁶ It has jurisdiction over the crime



Prosecutor of the International Criminal Court Karim Khan speaks during a press conference at the Special Jurisdiction for Peace in Bogota, Colombia. LUISA GONZALEZ via Reuters Connect

²⁶ "The ICC at a Glance," International Criminal Court, last visited September 27, 2022, <https://www.icc-cpi.int/sites/default/files/Publications/ICCAtAGlanceENG.pdf>.

of genocide, crimes against humanity, war crimes, and the crime of aggression.²⁷ The court, located in The Hague, is primarily funded through contributions from states parties, but may also receive voluntary contributions from other entities.²⁸ While the ICC has an institutional relationship with the United Nations, it is an independent body.²⁹

On July 17, 1998, the Rome Statute of the International Criminal Court was adopted, and it entered into force on July 1, 2002, after ratification by sixty countries.³⁰ Currently, 123 countries are states parties to the Rome Statute, representing all global regions.³¹

At the time of writing, there are seventeen situations under investigation and two under preliminary examination, with the situation in Ukraine the latest to be opened after referral by forty-three states parties.³² There have been thirty-one cases opened, ten convictions, and four acquittals.³³ At the time of writing, the judges of the court have publicly issued forty arrest warrants, the most recent for Russian President Vladimir Putin and Maria Lvova-Belova on charges of unlawful deportation and transfer of children.³⁴ The ICC depends on states parties to enforce warrants, as it does not have its own police force.³⁵ Thus far, twenty-one suspects have been detained, but sixteen remain at large.³⁶

Composition of the ICC

The court is made up of four organs.³⁷

The Presidency

The presidency consists of three of the court's judges, elected by fellow judges for a term of three years to serve as president, first vice president, and second vice president.³⁸ The presidency is responsible for administration (except as it relates to the Office of the Prosecutor (OTP)), judicial and legal matters, and external relations.³⁹

Chambers

The chambers are organized into three divisions: pre-trial, trial, and appeals chambers.⁴⁰ In total, eighteen judges fill the three chambers. The judges are chosen by the Assembly of States Parties from a pool of candidates from states parties to the Rome Statute. The judges ensure the right to a fair trial and the proper administration of justice.⁴¹

The Office of the Prosecutor

The prosecutor heads the OTP and is assisted by the deputy prosecutor.⁴² The current prosecutor is assisted by two deputy prosecutors.⁴³ The office's mandate is to receive referrals and communications, which it analyzes to determine whether a reasonable basis to investigate exists. The office conducts preliminary examinations and investigations into the crimes under the court's jurisdiction.⁴⁴ The OTP focuses on the individuals who bear the greatest responsibility for

27 Rome Statute of the International Criminal Court, Article 5, July 17, 1998, 2187 UNTS 3 (hereafter cited as Rome Statute).

28 "The ICC at a Glance."

29 "Understanding the International Criminal Court," International Criminal Court, last visited September 27, 2022, 10, <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>.

30 "Understanding the International Criminal Court," 10; "The ICC at a Glance."

31 "The States Parties to the Rome Statute," International Criminal Court, last visited September 27, 2022, <https://asp.icc-cpi.int/states-parties>; "Understanding the International Criminal Court," 10.

32 "Situations under Investigation," International Criminal Court, last visited September 27, 2022, <http://www.icc-cpi.int/situations-under-investigations>; "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation," International Criminal Court, March 2, 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>.

33 "About the Court," International Criminal Court, last visited May 19, 2023, <http://www.icc-cpi.int/about/the-court>.

34 "About the Court"; "Statement by Prosecutor Karim A. A. Khan KC on the Issuance of Arrest Warrants against President Vladimir Putin and Ms Maria Lvova-Belova," International Criminal Court, March 17, 2023, <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>.

35 "Understanding the International Criminal Court," 36.

36 "About the Court."

37 Rome Statute, Article 34.

38 *Ibid.*, Article 38.

39 "Presidency and Chambers," International Criminal Court, last visited September 27, 2022, <https://www.icc-cpi.int/sites/default/files/Publications/PresidencyAndChambersENG.pdf>.

40 Rome Statute, Article 39(1).

41 "The ICC at a Glance."

42 *Ibid.*

43 "Who's Who," International Criminal Court, last visited June 14, 2023, <https://www.icc-cpi.int/about/otp/who-s-who>.

44 "Office of the Prosecutor," International Criminal Court, last visited September 27, 2022, <https://www.icc-cpi.int/sites/default/files/Publications/otpENG.pdf>.



An Iranian woman gives a speech in front of the International Criminal Court during a protest calling for justice after the death of Mahsa Jina Amini. Romy Arroyo Fernandez via Reuters Connect

crimes.⁴⁵ Officials, even at the highest levels, cannot use immunity or amnesty as a defense before the court.⁴⁶

An investigation may be initiated before the court under three scenarios:⁴⁷

- a state party refers a situation in which crimes under the court’s jurisdiction appear to have been committed;⁴⁸
- the United Nations Security Council, acting under Chapter VII of the UN Charter, refers a situation in

which crimes under the court’s jurisdiction appear to have been committed;⁴⁹ and

- the prosecutor, acting on the basis of information regarding crimes under the court’s jurisdiction, initiates an investigation on his or her own initiative (*proprio motu*) with the authorization of the pre-trial chamber.⁵⁰ Any individual, group, or organization may submit a communication to the OTP under Article 15 of the Rome Statute regarding potential crimes under the court’s jurisdiction.⁵¹

45 Ibid.

46 “Understanding the International Criminal Court,” 14. See: “Al-Bashir Case: ICC Appeals Chamber Confirms Jordan’s Non-Cooperation but Reverses the Decision Referring It to the ASP and UNSC,” International Criminal Court, May 6, 2019, https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reverses-decision#:~:text=The%20Appeals%20Chamber%20held%20that,%C3%A0%2Dvis%20an%20international%20court;Prosecutor+v.+Al-Bashir,+Judgment+in+the+Jordan+Referral+re+Al-Bashir+Appeal,+Appeals+Chamber,+ICC,+ICC-02/05-01/09-397,+May+6,+2019,+https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_02593.PDF.

47 “Office of the Prosecutor.”

48 Rome Statute, Article 14.

49 Ibid., Article 13(b).

50 Ibid., Article 15.

51 See, e.g.: “How to File a Communication to the ICC Prosecutor,” Coalition for the International Criminal Court, last visited September 27, 2022, <https://coalitionfortheicc.org/how-file-communication-icc-prosecutor>.

The Registry

The registry is a neutral organ and is headed by the registrar. Its main functions are to provide administrative and operational support to both the judicial organs of the court and to the OTP. The registry is also in charge of general management of the court, security, public information, court records, support for victim participation in proceedings, etc.⁵²

Jurisdiction

The court may exercise jurisdiction over crimes committed on the territory of a state party or by nationals of a state party.⁵³ Additionally, the court only has jurisdiction over the crime of genocide, crimes against humanity, and war crimes when committed after July 1, 2002, and over the crime of aggression when committed after July 17, 2018.⁵⁴ For the crime of aggression, specifically, the court may not exercise jurisdiction with respect to acts committed by a state party that has lodged a declaration with the registrar of the court rejecting such jurisdiction.⁵⁵

The above territorial limits on jurisdiction do not apply to situations referred to the Office of the Prosecutor by the United Nations Security Council.⁵⁶ However, the court may not exercise its jurisdiction over events that occurred prior to July 1, 2002, under any circumstances.⁵⁷ Further, the court may only exercise jurisdiction over individuals, not over groups or states.⁵⁸ Lastly, a country that is not a party to the Rome Statute may lodge a declaration with the registrar of the court accepting its jurisdiction under a limited temporal or territorial scope.⁵⁹

Admissibility

Even when the court has jurisdiction, it may decline to exercise it over a particular case if it finds it is not admissible.⁶⁰ Under the principle of complementarity, priority in investigating and prosecuting international crimes is given to national courts that are able and willing to address the crimes raised before the court, as states have primary responsibility in trying the perpetrators.⁶¹ The ICC may only investigate and prosecute the crimes over which it holds jurisdiction when the state concerned has not investigated or prosecuted a case, because it is either unable or unwilling to do so genuinely.⁶² The court is, thus, commonly referred to as a court of last resort.⁶³ A case is likewise inadmissible when it is not of sufficient gravity.⁶⁴

Victims

Victims, those harmed by the commission of crimes under the court's jurisdiction, can be individuals, organizations, or institutions.⁶⁵ Victims may send information to the prosecutor requesting the initiation of an investigation. Victims can also participate in proceedings before the court and request reparations, a first in international criminal justice. The ICC has established the Victims Participation and Reparation Section (VPRS) and the Victims and Witnesses Unit (VWU) to assist victims with administrative matters throughout proceedings. Both the VPRS and the VWU are under the registry.⁶⁶

Defense

Defendants are entitled to a fair trial.⁶⁷ The Rome Statute guarantees everyone will be presumed innocent until

52 "The ICC at a Glance."

53 Rome Statute, Article 12(2).

54 "The ICC at a Glance."

55 Rome Statute, Article 15*bis*(4).

56 "The ICC at a Glance"; "Understanding the International Criminal Court," 11.

57 "Understanding the International Criminal Court," 11.

58 *Ibid.*, 14.

59 Rome Statute, Article, 12(3).

60 William A. Schabas, *An Introduction to the International Criminal Court*, 6th ed. (Cambridge: Cambridge University Press, 2020), 181.

61 "Understanding the International Criminal Court," 11. For a detailed analysis of how the principle of complementarity functions at the ICC, see: Paul Seils, "Handbook on Complementarity," International Center for Transitional Justice, last visited September 27, 2022, https://www.ictj.org/sites/default/files/ICTJ_Handbook_ICC_Complementarity_2016.pdf.

62 Rome Statute, Article 17(1)(a)-(c).

63 See, e.g.: "The Role of the International Criminal Court in Ending Impunity and Establishing the Rule of Law," United Nations, last visited September 27, 2022, <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law>.

64 Rome Statute, Article 17(1)(d). For an analysis of the court's case law regarding the gravity requirement, see: Ingrid Mitgutsch, "(In-)Sufficient Gravity of Cases before the International Criminal Court," *Völkerrechtsblog*, July 12, 2022, <https://voelkerrechtsblog.org/in-sufficient-gravity-of-cases-before-the-international-criminal-court/>.

65 "Victims," International Criminal Court, last visited September 27, 2022, <http://www.icc-cpi.int/about/victims>.

66 "Victims before the Court," International Criminal Court, last visited September 27, 2022, <https://www.icc-cpi.int/sites/default/files/Publications/VictimsENG.pdf>.

67 "Defence," International Criminal Court, last visited September 27, 2022, <http://www.icc-cpi.int/about/defence>.

proven guilty beyond reasonable doubt.⁶⁸ Every defendant is entitled to a public hearing, conducted impartially.⁶⁹ The Rome Statute enumerates specific minimum guarantees to which defendants are entitled, including, among others, the right to be informed of the charges, the right to have legal assistance, adequate time and facilities to prepare a defense, the right to communicate freely with counsel, the right to be tried without undue delay, the right to examine witnesses, the right not to be compelled to testify or to confess guilt, and the right to remain silent.⁷⁰

Defense counsel, who must be qualified to practice at the ICC, are independent externally appointed counsel and, as such, not staff of the court.⁷¹

The IRI's Relationship with the ICC

The IRI is not a state party to the Rome Statute, although it is a signatory.⁷² As such, the ICC does not have jurisdiction over crimes committed on the territory of Iran unless they are committed by the nationals of a state party. Nor does the ICC have jurisdiction over Iranian nationals unless they commit crimes on the territory of a state party, or where a state has accepted the court's jurisdiction over alleged crimes committed on its territory, or within the context of a situation referred to the court by the UN Security Council. Nonetheless, the IRI routinely sends a delegation to the annual full plenary session of the Assembly of States Parties of the ICC—during which deliberations and decisions are made on the court's core legal texts, allotted resources, and other management issues. When the IRI attends, it takes an active part in sessions.⁷³

Two communications currently before the ICC regarding crimes committed by Iranian nationals argue the court has jurisdiction because the crimes were committed on either the territory of a state party or on the territory of a nonstate party that has lodged a declaration accepting the court's jurisdiction.

The IRI's Role in the Syrian Conflict

On February 16, 2022, the Iran Human Rights Documentation Center submitted a request to the OTP in accordance with Article 15 of the Rome Statute to open a preliminary examination into the IRI's role in the Syrian conflict.⁷⁴ This is the first known request addressing the role of Iranian officials in Syria.⁷⁵ The request alleged that perpetrators from the IRI and the IRGC are responsible for the direct commission, as well as aiding and abetting of certain crimes against the Syrian civilian population such as the crimes against humanity of deportation, persecution, and "other inhumane acts." These crimes have forced the Syrian civilian population to flee into neighboring Jordan.⁷⁶

Like the IRI, Syria is not a state party to the Rome Statute. However, Jordan, where the victims were forced to flee, is a state party.⁷⁷ Prior ICC case law clarified that the court holds jurisdiction over certain crimes when they are completed on the territory of a state party.⁷⁸ Specifically, in 2018, the court held it had jurisdiction over crimes committed against the Rohingya people, who were forced to flee from Myanmar into Bangladesh. While Myanmar, where the crimes originated, is not a state party, Bangladesh, where the crimes were completed, is a state party.⁷⁹

68 Rome Statute, Article 66.

69 Ibid., Article 67(1).

70 Ibid., Article 67.

71 "Defence."

72 "Signatories Which Have Not Ratified," Parliamentarians for Global Action, last updated January 16, 2022, <https://www.pgaction.org/ilhr/rome-statute/signed-but-not-ratified.html>.

73 See, e.g.: "Statement by the Islamic Republic of Iran at 18th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 2–7 December 2019," Embassy of the Islamic Republic of Iran, December 2019, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/GD.IRN.3.12.pdf; "Statement by the Islamic Republic of Iran at the 19th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 14–16 December 2020, The Hague," Embassy of the Islamic Republic of Iran, December 2020, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/GD.IRA.14.12.pdf; "Statement by the Delegation of the Islamic Republic of Iran at the Twenty-First Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, General Debate, World Forum, The Hague, the Kingdom of the Netherlands, 5–10 December 2022," Delegation of the Islamic Republic of Iran, December 2022, https://asp.icc-cpi.int/sites/asp/files/2022-12/ASP21.GD_IRN_06.12.pdf.

74 "IHRDC Submits Request for the International Criminal Court Prosecutor to Examine Iran's Role in the Syrian Conflict," Iran Human Rights Documentation Center, last visited September 27, 2022, <https://iranhrdc.org/ihrdc-submits-request-for-the-international-criminal-court-prosecutor-to-examine-irans-role-in-the-syrian-conflict/>.

75 Patrick Wintour, "Human Rights Lawyers Attempt to Bring Syria War Crimes Cases to ICC," *Guardian*, February 16, 2022, <https://www.theguardian.com/world/2022/feb/16/human-rights-lawyers-attempt-to-bring-syria-war-crimes-cases-to-icc>.

76 "IHRDC Submits Request for the International Criminal Court Prosecutor to Examine Iran's Role in the Syrian Conflict."

77 Ibid.

78 See: Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute," Pre-Trial Chamber I, ICC, ICC-RoC46(3)-01/18-37, 6 September 2018, paragraph 73, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF; Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Pre-Trial Chamber III, ICC, ICC-01/19-27, 14 November 2019, paragraphs 54–62, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF.

79 "Statement of ICC Prosecutor, Mrs Fatou Bensouda, on Opening a Preliminary Examination Concerning the Alleged Deportation of the Rohingya People from Myanmar to Bangladesh," International Criminal Court, September 18, 2018, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-opening-preliminary-examination-concerning-alleged>; Wintour, "Human Rights Lawyers Attempt to Bring Syria War Crimes Cases to ICC."



Photos of victims of the shootdown of Flight PS752 are displayed during a protest against the Islamic Republic in Bonn, Germany. Ying Tang via Reuters Connect

Shootdown of Flight PS752

On September 14, 2022, lawyers representing the Association of Families of Flight PS752 Victims submitted a request under Article 15 of the Rome Statute for the OTP to include the shootdown of Ukraine International Airlines Flight 752 (Flight PS752) by the IRGC in the existing investigation into the situation in Ukraine.⁸⁰ On January 8, 2020, the IRGC shot down Flight PS752, a commercial airliner, killing all 176 people on board.⁸¹ The shootdown occurred hours after Iran fired ballistic missiles at US bases in Iraq in retaliation for the US killing of Qasem Soleimani.⁸² The submission alleged the shootdown constituted the crimes

against humanity of murder and “other inhumane acts,” as well as war crimes.⁸³

Although not a state party, Ukraine has accepted the jurisdiction of the ICC over crimes committed in its territory, which includes aircraft registered to the state, like Flight PS752.⁸⁴ Further, the OTP has clarified that jurisdiction covers situations wherein an attack is launched from the territory of a country that is not a state party onto the territory of a state over whose territory the court has jurisdiction.⁸⁵ The first arrest warrants issued in the situation in Ukraine were against Putin and Lvova-Belova for the unlawful deportation and transfer of children concern a transnational

80 The legal team includes authors of this report. Claire Parker, “How the Fighting in Ukraine Could Lead to a War Crimes Case against Iran,” *Washington Post*, September 15, 2022, <https://www.washingtonpost.com/world/2022/09/15/iran-ukraine-flight-ps752-icc/>; Borger, “Our Lives Are Destroyed.”

81 Parker, “How the Fighting in Ukraine Could Lead to a War Crimes Case against Iran.”

82 Ibid.

83 Borger, “Our Lives Are Destroyed.”; Ashley Burke and Nahayat Tizhoosh, “Families of Flight PS752 Victims Call for War Crimes Probe,” *CBC News*, September 15, 2022, <https://www.cbc.ca/news/politics/families-flight-ps752-icc-investigation-1.6583408>.

84 Borger, “Our Lives Are Destroyed.”

85 “Families of Flight PS752 Victims Submit Request for the International Criminal Court Prosecutor to Examine Iran’s Role in the Shootdown of Ukraine Airlines International Flight 752,” *GlobeNewswire*, September 14, 2022, <https://www.globenewswire.com/news-release/2022/09/14/2516344/0/en/Families-of-Flight-PS752-victims-submit-request-for-the-International-Criminal-Court-Prosecutor-to-examine-Iran-s-role-in-the-shootdown-of-Ukraine-Airlines-International-Flight-752.html>; See: Office of the Prosecutor, “Situation in the Republic of Korea: Article 5 Report,” *International Criminal Court*, June 2014, paragraph 38, <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/SAS-KOR-Article-5-Public-Report-ENG-05Jun2014.pdf>.

crime.⁸⁶ The allegations revolve around moving children from Ukraine, which has lodged a declaration accepting the ICC's jurisdiction, to Russia, a country that is not a state party to the Rome Statute and has never accepted the court's jurisdiction.⁸⁷ The clear jurisprudence of the court supports the exercise of jurisdiction over transnational crimes, even when only the country where a crime began or the one in which it was completed has accepted its jurisdiction.

Recommendations

- The OTP should open a preliminary examination focusing on the role of the IRI and the IRGC in the Syrian conflict and consider any evidence on the responsibility for Rome Statute crimes of the IRI, IRGC, and groups under their control in all open preliminary examinations and investigations.
- States parties to the Rome Statute should refer situations to the court involving the commission of crimes under its jurisdiction in their territory by Iranian officials.
- Because states parties to the Rome Statute do not need a connection to Rome Statute crimes committed within their knowledge, they should refer situations to the court involving the commission of Rome Statute crimes where jurisdiction applies, such as with certain crimes in Syria involving Iran and crimes committed by the IRI on the territory of Ukraine/Flight PS752.⁸⁸
- States parties should cooperate with the court in investigating matters concerning Iran.
- Civil-society organizations should file Article 15 communications with the OTP when there is jurisdiction because part of the crime has been committed on

the territory of a state party or of a state that has accepted the court's jurisdiction.

- Civil-society organizations should investigate transboundary elements of crimes committed by Iranian officials to ascertain whether the ICC would have jurisdiction in assessing whether to submit information.

International Court of Justice

How the ICJ Functions

The International Court of Justice is the principal judicial organ of the United Nations, established in 1945 to settle disputes between states and issue advisory opinions on legal questions submitted to it by UN organs and agencies.⁸⁹ The ICJ comprises fifteen judges, each from a different nationality, who serve nine-year terms and are elected by the General Assembly and Security Council, upon nomination by UN member states.⁹⁰ The court is supported by the registry, which assists with judicial tasks and functions as an international secretariat.⁹¹

Contentious Cases

Access to the ICJ

The majority of the ICJ's work is resolving "contentious cases" submitted by one state against another.⁹² Only states may be parties to contentious cases before the ICJ, and all parties must have consented in some way to the ICJ's jurisdiction.⁹³ All UN member states (including Iran) are entitled to appear before the ICJ and initiate cases.⁹⁴ Countries that are not UN member states can become parties to the Statute of the ICJ on a case-by-case basis, as determined by the UN General Assembly in conjunction with the UN Security Council.⁹⁵ In addition, states not party

86 "Statement by Prosecutor Karim A. A. Khan KC on the Issuance of Arrest Warrants against President Vladimir Putin and Ms Maria Lvova-Belova."

87 "Explainer: All You Need to Know about the ICC's Arrest Warrant for Putin," Al Jazeera, March 17, 2023, <https://www.aljazeera.com/news/2023/3/17/all-you-need-to-know-about-the-iccs-arrest-warrant-for-putin>.

88 Note that in the Venezuela situation, for example, six states parties made a referral to the court, including Argentina, Canada, Colombia, Chile, Paraguay, and Peru, despite having no direct connection to the situation or crimes in Venezuela. See: "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Referral by a Group of Six States Parties Regarding the Situation in Venezuela."

89 "The Court," International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/court>. See also: Charter of the United Nations, Chapter XIV, Articles 92–96, <https://www.un.org/en/about-us/un-charter/full-text>.

90 Statute of the International Court of Justice, Articles 3(1), 4, 13(1), <https://www.icj-cij.org/en/statute>; "Members of the Court," International Court of Justice, last visited May 22, 2023, <https://icj-cij.org/members>.

91 "The Registry," International Court of Justice, last visited July 28, 2023, <https://www.icj-cij.org/registry>.

92 See, e.g.: "List of All Cases," International Court of Justice, last visited May 22, 2023, <https://www.icj-cij.org/list-of-all-cases>.

93 Statute of the International Court of Justice, Article 34(1); "How the Court Works," International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/how-the-court-works>; "Contentious Jurisdiction," International Court of Justice, last visited May 22, 2023, <https://icj-cij.org/contentious-jurisdiction>. Note that this is distinct from international criminal tribunals, such as the ICC or the International Tribunal for the Former Yugoslavia, where proceedings are instituted against individual persons, rather than states.

94 Statute of the International Court of Justice, Article 35(1); UN Charter, Article 93(1); "States Entitled to Appear before the Court," International Court of Justice, last visited May 22, 2023, <https://icj-cij.org/states-entitled-to-appear>.

95 UN Charter, Article 93(2); "States Not Members of the United Nations Parties to the Statute," International Court of Justice, last visited May 23, 2023, <https://icj-cij.org/states-not-members>.



An exterior view of the International Court of Justice (ICJ) in The Hague. Piroshka Van De Wouw via Reuters Connect

to the Statute of the ICJ can access the court by depositing a declaration accepting its jurisdiction with the registry.⁹⁶

Subject-Matter Jurisdiction

The ICJ can hear any matter which all parties refer to it through a “special agreement.”⁹⁷ The ICJ can also hear matters specially provided for in the UN Charter or in other treaties and conventions—namely, disputes regarding the interpretation, implementation, or violation of a treaty, where the treaty specifies that disputes will be submitted

to the ICJ.⁹⁸ These cases may be initiated unilaterally by one of the parties.⁹⁹ In addition, the ICJ can hear legal disputes between states that have accepted its compulsory jurisdiction pursuant to Article 36(2) of the Statute of the Court.¹⁰⁰ Only seventy-three states recognize the ICJ’s compulsory jurisdiction, and that list excludes numerous powerful countries like China, France, Israel, Russia, the United States, and Iran, among others.¹⁰¹

Accordingly, the ICJ has jurisdiction over contentious cases involving Iran when the case is referred to the court

96 Statute of the International Court of Justice, Article 35(2); “UN Security Council Resolution 9,” United Nations, 1946, <https://www.icj-cij.org/en/other-texts/resolution-9>; Palestine has accepted the ICJ’s jurisdiction over disputes regarding the Vienna Convention on Diplomatic Relations. “States Not Parties to the Statute to Which the Court May Be Open,” International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/states-not-parties>.

97 Statute of the International Court of Justice, Articles 36(1), 40(1); “How the Court Works.” The special agreement lists the parties involved and the subject of the dispute. Cases submitted by special agreement do not have an “applicant” or “respondent” state because they are referred by the parties. Thus, they are titled as “State/State.”

98 Statute of the International Court of Justice, Article 36(1). The ICJ may also hear disputes regarding treaties predating the ICJ that provided for disputes to be resolved at the Permanent Court of International Justice or the League of Nations. Statute of the International Court of Justice, Article 37.

99 Statute of the International Court of Justice, Article 40(1); “How the Court Works.” The application must identify the parties, the claim brought, the subject of the dispute, the basis for jurisdiction, and facts and grounds on which the claim is based. These cases are titled as “State v. State.”

100 Statute of the International Court of Justice, Article 36(2)–(5).

101 “Declarations Recognizing the Jurisdiction of the Court as Compulsory,” International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/declarations>.

by special agreement, or when the dispute involves a treaty with an ICJ dispute-resolution clause to which Iran is party. Lastly, a case regarding a dispute relating to Iran over which the ICJ does not have jurisdiction at the time an application is brought could be heard by the court under the *forum prorogatum* rule, but only if Iran subsequently consents to the court's jurisdiction.¹⁰²

Proceedings

Proceedings open on the date the registrar receives the special agreement or application submitting the case.¹⁰³ Proceedings first go through a written phase, in which parties file and exchange pleadings detailing the facts and law upon which they rely.¹⁰⁴ The ICJ then holds a public hearing to hear from states' agents, counsel, witnesses, experts, and advocates.¹⁰⁵ Following the hearing, the ICJ deliberates in private and then issues a public judgment.¹⁰⁶

States may make incidental proceedings during a case, which intersperse between the normal proceedings. Incidental proceedings may include preliminary objections challenging jurisdiction or admissibility of an application, requests for the ICJ to implement provisional measures to protect rights in immediate danger, and interventions by third-party states that claim an interest in the case.¹⁰⁷ States may settle or discontinue a case at any point, which will terminate proceedings at the ICJ.¹⁰⁸

Judgments

In issuing judgments, the sources of law upon which the ICJ can rely are international conventions, international custom, general principles of law, and judicial decisions and

teachings of the "most highly qualified publicists of the various nations."¹⁰⁹ The ICJ decides all questions based on a majority vote, and its judgment is final and binding on parties, with no right of appeal.¹¹⁰ Because the ICJ is not a criminal court, it cannot issue criminal judgments or sentences. Instead, its judgments determine whether a state has violated a treaty or legal obligation, and order states to remedy such violations. In the event that a state does not implement a judgment, the opposing party can raise the issue at the United Nations Security Council, which could issue measures to enforce the judgment.¹¹¹ As relates to Iran, specifically, this means that if the IRI fails to implement the court's orders in any case against it, the other party could bring this noncompliance to the attention of the United Nations Security Council (UNSC) so it can decide what measures to enact to give effect to the ICJ's judgment.

Advisory Proceedings

Although less common than contentious cases, the ICJ can also issue advisory opinions on questions of law submitted by the UN General Assembly, Security Council, Economic and Social Council, and Trusteeship Council, as well as sixteen specialized agencies of the UN and affiliated organizations.¹¹² The General Assembly and Security Council can request advisory opinions on any legal question, while the other UN organs and agencies can request opinions only on legal questions arising within the scope of their activities.¹¹³ The court notifies states and organizations entitled to participate in proceedings and which may submit written statements. As in contentious cases, there is typically a stage of written proceedings, followed by oral proceedings, before the ICJ issues a judgment in a public setting.¹¹⁴ Advisory opinions are not binding, and the requesting UN organ or agency can decide what effect to

102 Rules of Court, Article 38(5), International Court of Justice, 1978, <https://icj-cij.org/rules>; "Basis of the Court's Jurisdiction," International Court of Justice, last visited May 22, 2023, <https://www.icj-cij.org/basis-of-jurisdiction>.

103 "How the Court Works."

104 "How the Court Works"; Statute of the International Court of Justice, Article 43(2).

105 "How the Court Works"; Statute of the International Court of Justice, Article 43(5).

106 "How the Court Works"; Statute of the International Court of Justice, Articles 54(2)–(3), 55(1), 58.

107 "How the Court Works"; Rules of Court, International Court of Justice, Section D, Incidental Proceedings, Articles 73–89; Statute of the International Court of Justice, Articles 41, 62–63. For instance, in *The Gambia v. Myanmar*, regarding violations of the Genocide Convention by Myanmar against its Rohingya population, the court issued provisional measures requiring Myanmar to "take all measures within its power to prevent the commission of" acts of genocide against the Rohingya, prevent destruction of and ensure preservation of evidence related to acts of genocide, and submit a report to the court every six months on steps taken under the provisional measures. "The Court Indicates Provisional Measures in Order to Preserve Certain Rights Claimed by The Gambia for the Protection of the Rohingya in Myanmar," International Court of Justice, January 23, 2020, <https://www.icj-cij.org/public/files/case-related/178/178-20200123-PRE-01-00-EN.pdf>.

108 Rules of Court, International Court of Justice, Articles 88–89; "How the Court Works."

109 Statute of the International Court of Justice, Article 38; "How the Court Works."

110 Statute of the International Court of Justice, Articles 55, 59, 60; "How the Court Works." Any judge who does not agree with the final judgment, either in part or as a whole, may issue a separate opinion, although separate opinions are not binding. Statute of the International Court, Article 57.

111 "How the Court Works."

112 Statute of the International Court of Justice, Article 65; "Advisory Jurisdiction," International Court of Justice, last visited May 23, 2023, <https://www.icj-cij.org/advisory-jurisdiction>; "Organs and Agencies Authorized to Request Advisory Opinions," International Court of Justice, last visited May 23, 2023, <https://www.icj-cij.org/organs-agencies-authorized>.

113 UN Charter, Article 96; "Organs and Agencies Authorized to Request Advisory Opinions."

114 Statute of the International Court of Justice, Articles 66–67; "Advisory Jurisdiction."



A statue of a US hostage is displayed in front of the main building of the former US embassy in Tehran. Raheb Homavandi via Reuters Connect

give the opinion. However, advisory opinions are typically given substantial weight, and some instruments require advisory opinions to be given binding force.¹¹⁵

Cases Involving Iran at the ICJ

At the time of writing, eight cases have been filed at the ICJ involving Iran, three of which remain ongoing.¹¹⁶ These ongoing cases will likely take years to reach the final judgment stage.

The earliest case is from 1951, when the United Kingdom filed a claim arguing that Iran violated an oil concession

agreement with the Anglo-Iranian Oil Company. The ICJ dismissed the case after determining it lacked jurisdiction.¹¹⁷ In 1979, the United States filed a claim regarding the occupation of its embassy in Tehran and the capture and holding hostage of diplomatic and consular staff. The ICJ issued provisional measures requiring Iran to release the hostages and restore the embassy to the United States, and its subsequent final judgment held that Iran violated obligations owed to the United States under conventions and needed to issue reparations.¹¹⁸ In 1989, Iran filed a claim against the United States regarding the warship *USS Vincennes* shooting down Iran Air Flight 655 the year prior, killing all 290 people on board. Iran and the United States

¹¹⁵ "Advisory Jurisdiction"; "How the Court Works."

¹¹⁶ "Contentious Cases Organized by State: Iran, Islamic Republic of," International Court of Justice, last visited July 6, 2023, <https://www.icj-cij.org/cases-by-country/ir>.

¹¹⁷ The court lacked jurisdiction because Iran had not accepted its compulsory jurisdiction over treaties concluded prior to 1932, which was the basis of jurisdiction for the UK claim. "Anglo-Iranian Oil Co. (United Kingdom v. Iran)," International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/case/16>.

¹¹⁸ "United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)," International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/case/64>.

subsequently settled the case and withdrew it from the ICJ.¹¹⁹ The *Oil Platforms* case, filed by Iran in 1992 against the United States, concerned the US destruction of Iranian oil platforms in the Persian Gulf. The ICJ held that the US actions did not violate the 1955 Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States (the 1955 Treaty of Amity).¹²⁰

In 2016, Iran filed a claim against the United States, arguing that the US designation of Iran as a state sponsor of terrorism—which subjects Iranian assets and interests to enforcement proceedings in the United States—violates the countries’ 1955 Treaty of Amity.¹²¹ The United States contested the ICJ’s jurisdiction, arguing, among other things, that blocking Iranian assets and financial institutions falls outside the scope of the treaty.¹²² However, in its 2019 judgment on preliminary objections, the ICJ rejected that US argument, finding that the argument possibly amounted to a defense under the treaty, but did not constitute a restriction on jurisdiction.¹²³ The ICJ issued its final judgment in the case on March 30, 2023.¹²⁴ The ICJ, in a markedly divided decision, found in favor of and against both parties on a number of issues.¹²⁵ While the court’s decision allows payments to families of victims of Iranian state-sponsored terrorism to proceed, it prevents

certain US efforts to widen the funding sources for these payments. Lastly, the ICJ found the United States violated several obligations under the 1955 Treaty of Amity and ordered it to compensate Iran an amount to be determined by the parties within twenty-four months.¹²⁶

In July 2018, Iran filed another claim against the United States, arguing that US sanctions against Iran violate the countries’ 1955 Treaty of Amity.¹²⁷ The United States again contested jurisdiction, and the ICJ again held that it has jurisdiction under the treaty.¹²⁸ The ICJ also issued provisional measures in October 2018, requiring the United States to lift sanctions blocking the free trade of medicine, food, and spare parts for civilian aviation.¹²⁹ After the ICJ announced its provisional measures, US Secretary of State Mike Pompeo announced that the United States was terminating the 1955 Treaty of Amity.¹³⁰ The case remains open, with written proceedings ongoing.¹³¹

In June 2023, Iran accepted the court’s compulsory jurisdiction on the narrow question of state immunities from jurisdiction and measures of constraint.¹³² The next day, it filed an application instituting proceedings against Canada on the basis that both countries had accepted the ICJ’s compulsory jurisdiction.¹³³ Specifically, the application

- 119 “Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America),” International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/case/79>.
- 120 “Oil Platforms (Islamic Republic of Iran v. United States of America),” International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/case/90>.
- 121 Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Application Instituting Proceedings, ICJ, June 14, 2016, <https://www.icj-cij.org/sites/default/files/case-related/164/164-20160614-APP-01-00-EN.pdf>; “Iran Institutes Proceedings against the United States with Regard to a Dispute Concerning Alleged Violations of the 1955 Treaty of Amity,” International Court of Justice, press release, June 15, 2016, <https://www.icj-cij.org/sites/default/files/case-related/164/19032.pdf>.
- 122 Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections Submitted by the United States of America, ICJ, May 1, 2017, paragraphs 1.8–1.15, <https://www.icj-cij.org/sites/default/files/case-related/164/164-20170501-WRI-01-00-EN.pdf>.
- 123 Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, ICJ, February 13, 2019, paragraphs 45–47, <https://www.icj-cij.org/sites/default/files/case-related/164/164-20190213-JUD-01-00-EN.pdf>.
- 124 Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Judgment, ICJ, March 30, 2023, <https://www.icj-cij.org/sites/default/files/case-related/164/164-20230330-JUD-01-00-EN.pdf>; “Certain Iranian Assets (Islamic Republic of Iran v. United States of America),” International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/case/164>.
- 125 Celeste Kmiotek, “What the ICJ Ruling on the Central Bank of Iran Means for the US and the Islamic Republic—and Those Seeking Reparations for State-Sponsored Atrocities,” Atlantic Council *IranSource*, April 24, 2023, <https://www.atlanticcouncil.org/blogs/iransource/what-the-icj-ruling-on-the-central-bank-of-iran-means-for-the-us-and-the-islamic-republic-and-those-seeking-reparations-for-state-sponsored-atrocities/>.
- 126 Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Judgment, paragraph 236; Kmiotek, “What the ICJ Ruling on the Central Bank of Iran Means for the US and the Islamic Republic—and Those Seeking Reparations for State-Sponsored Atrocities.”
- 127 Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Application Instituting Proceedings, ICJ, July 16, 2018, <https://www.icj-cij.org/sites/default/files/case-related/175/175-20180716-APP-01-00-EN.pdf>.
- 128 Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, ICJ, February 3, 2021, <https://www.icj-cij.org/sites/default/files/case-related/175/175-20210203-JUD-01-00-EN.pdf>.
- 129 Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Order on Request for the Indication of Provisional Measures, ICJ, October 3, 2018, <https://www.icj-cij.org/public/files/case-related/175/175-20181003-ORD-01-00-EN.pdf>.
- 130 Edward Wong and David E. Sanger, “U.S. Withdraws From 1955 Treaty Normalizing Relations With Iran,” *New York Times*, October 3, 2018, <https://www.nytimes.com/2018/10/03/world/middleeast/us-withdraws-treaty-iran.html>.
- 131 “Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America),” International Court of Justice, last visited August 31, 2023, <https://icj-cij.org/case/175>.
- 132 “Declarations Recognizing the Jurisdiction of the Court as Compulsory: Iran, Islamic Republic of,” International Court of Justice, June 25, 2023, <https://www.icj-cij.org/declarations/ir/>.
- 133 Application Instituting Proceedings in the Case Concerning the Violation of Iran’s Immunities (Islamic Republic of Iran v. Canada), ICJ, June 27, 2023, paragraph 1, <https://www.icj-cij.org/sites/default/files/case-related/189/189-20230628-app-01-00-en.pdf>; “The Islamic Republic of Iran Institutes Proceedings against Canada,” International Court of Justice, press release, June 28, 2023, <https://www.icj-cij.org/sites/default/files/case-related/189/189-20230628-pre-01-00-en.pdf>.

argues that Canada violated its international obligations with respect to the IRI's sovereign immunity from jurisdiction and measures of constraint, for example, orders to seize property, through various legislative, executive, and judicial actions taken against the IRI and its state property since 2012.¹³⁴ At the time of writing, there has been no response from Canada.

The latest case involving the IRI was initiated by the governments of Canada, Sweden, Ukraine, and the United Kingdom on July 5, 2023, concerning the IRI's shooting down of Flight PS752 in January 2020.¹³⁵ The application bases the ICJ's jurisdiction on Article 14 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (the Montreal Convention).¹³⁶ This claim could resemble the *Aerial Incident of 3 July 1988* case at the ICJ, which Iran filed against the United States after a US warship shot down an Iran Air passenger flight.¹³⁷

The ICJ has jurisdiction over the PS752 incident because shooting down a passenger airplane violates the Montreal Convention, which allows for disputes to be submitted to the ICJ only after the parties to the dispute have attempted to settle through negotiation and arbitration.¹³⁸ In June 2021, Canada, Sweden, Ukraine, and the United Kingdom delivered a notice of claim to the IRI, formally initiating negotiations. The countries made repeated attempts to engage with the IRI in negotiations, after which the IRI notified them in December 2021 that it unequivocally refused to engage.¹³⁹ In December 2022, Canada, Sweden, Ukraine, and the United Kingdom requested that the IRI submit to binding arbitration regarding the PS752 incident, fulfilling a second requirement under the Montreal Convention.¹⁴⁰ If, after six months, the states have not agreed on terms for organizing independent arbitration to resolve the dispute, any of the states can refer the dispute to the ICJ.¹⁴¹

Because the IRI failed to engage with the countries to settle the dispute through arbitration by June 28, 2023, Canada, Sweden, Ukraine, and the United Kingdom have now filed a case against the IRI at the ICJ, for violation of the Montreal Convention in shooting down Flight PS752, as they announced they would.¹⁴²

Potential New Cases Involving Iran at the ICJ

The ICJ could litigate additional cases filed by or against Iran, based on violations of treaties subject to the ICJ's jurisdiction or that fall within the scope of the IRI's narrow acceptance of the court's compulsory jurisdiction on questions relating to state immunities from jurisdiction and measures of constraint. The ICJ could also issue advisory opinions that may relate to Iran.

The IRI's Acceptance of the ICJ's Compulsory Jurisdiction

As noted above, the IRI accepted the ICJ's compulsory jurisdiction on June 26, 2023. Its declaration of acceptance is extremely narrow, limited exclusively to questions of state immunities from jurisdiction and from measures of constraint. In practice, this means it can only have proceedings instituted against it on this basis, relating to questions of state immunities from cases brought against a state in foreign courts or measures to place restrictions on property registered to a state on the territory of another, like asset seizures to fulfill judgments issued by foreign courts. In addition to the narrow scope for which the IRI accepts the ICJ's compulsory jurisdiction, its declaration of acceptance excludes any matters the IRI deems to be domestic questions, and matters relating to states the IRI does not recognize.¹⁴³

134 Application Instituting Proceedings in the Case Concerning the Violation of Iran's Immunities (Islamic Republic of Iran v. Canada), ICJ, paragraphs 2–4. See also: "The Islamic Republic of Iran Institutes Proceedings against Canada."

135 "Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran)," International Court of Justice, last visited August 31, 2023, <https://www.icj-cij.org/case/190>.

136 Ibid.

137 See: "Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)."

138 See: Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Article 14(1), September 23, 1971, 974 UNTS 177; Gissou Nia, "Will the Families of PS752 Ever Receive Justice?" Atlantic Council *IranSource*, January 8, 2021, <https://www.atlanticcouncil.org/blogs/iransource/will-the-families-of-ps752-ever-receive-justice/>.

139 "Canada's Response to Ukraine International Airlines Flight 752 Tragedy," Government of Canada, last visited August 11, 2023, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/flight-vol-ps752.aspx?lang=eng.

140 "Joint Statement from the International Coordination and Response Group for the Victims of Flight PS752 on Arbitration," Government of Canada, December 28, 2022, <https://www.canada.ca/en/global-affairs/news/2022/12/joint-statement-from-the-international-coordination-and-response-group-for-the-victims-of-flight-ps752-on-arbitration.html>. See also: Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Article 14(1).

141 "Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation," Government of Canada, last visited August 11, 2023, <https://www.canada.ca/en/global-affairs/news/2022/12/convention-for-the-suppression-of-unlawful-acts-against-the-safety-of-civil-aviation.html>.

142 See: "Joint Statement from the International Coordination and Response Group for the Victims of Flight PS752," Global Affairs Canada, June 29, 2023, <https://www.canada.ca/en/global-affairs/news/2023/06/joint-statement-from-the-international-coordination-and-response-group-for-the-victims-of-flight-ps752.html>; Peter Zimonjic, "Canada, Allies Taking Iran to International Court of Justice over Downing of Flight PS752," CBC, June 29, 2023, <https://www.cbc.ca/news/politics/canada-taking-iran-to-icj-flight-752-1.6892390>.

143 "Declarations Recognizing the Jurisdiction of the Court as Compulsory: Iran, Islamic Republic of."

Treaties to Which Iran Is Party that Are Subject to the ICJ's Jurisdiction

Iran is party to a handful of treaties that require disputes to be settled by the ICJ, including, but not limited to: the Convention on International Civil Aviation (the Chicago Convention); the Montreal Convention; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Discrimination in Education; the Convention Relating to the Status of Refugees; the Vienna Convention on Diplomatic Relations; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.¹⁴⁴ Any dispute regarding Iran's obligations under these treaties, and arising after Iran's ratification of the treaty, could be submitted to the ICJ by a party to the same treaty.

There are many other treaties that include an ICJ dispute-resolution clause, but which Iran has not ratified, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women. In addition, although Iran ratified the International Convention Against the Taking of Hostages in 2006, it included a reservation specifying that it "does not consider itself bound by" Article 16(1), which refers disputes to the ICJ.¹⁴⁵ Accordingly, although these treaties allow for disputes to be submitted to the ICJ, they could not result in a case by or against Iran.

The 1955 Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States—which is the basis for half the claims involving Iran at the ICJ—is also no longer a valid jurisdictional base for the ICJ. As noted above, the United States announced and formally notified

Iran of its intent to terminate the treaty on October 3, 2018.¹⁴⁶ By the terms of the treaty, that termination became effective one year later.¹⁴⁷ Accordingly, no new claims can be filed against or by Iran under the 1955 Treaty of Amity.

Cases That Could be Filed against the IRI at the ICJ

A case could be filed against the IRI under its recent acceptance of the ICJ's compulsory jurisdiction. However, as noted above, the IRI's declaration is extremely narrow; only cases alleging it has violated its legal obligations with respect to state immunities from jurisdiction or measures of constraint could be brought under this basis. Further, the reservations the IRI made to its declaration regarding domestic matters and states it does not recognize would need to be considered, as the IRI deems such issues outside the scope of its acceptance. While this basis is available, any case brought against the IRI is more likely to be brought under a treaty basis, as in the examples below.

Although there is no public indication that such a case is in the works, the IRI could face claims at the ICJ regarding discrimination against ethnic minorities, brought under the Convention on the Elimination of All Forms of Racial Discrimination or the Convention against Discrimination in Education. These claims could be based on the IRI's targeting, arrest, and execution of ethnic minorities, in particular civil-society activists; forced relocation of Arabs and Baluchis and demographic change of Arab-and Baluchi-inhabited regions; discrimination in housing conditions and employment opportunities for ethnic minorities; prohibition against the use of non-Persian languages in schools and the media; and restricted educational opportunities for those not practicing Islam, Christianity, Judaism, or Zoroastrianism, among other acts.¹⁴⁸ Any state party to these conventions that seeks to defend the rights of Iran's ethnic and religious minorities could request negotiations

144 Convention on International Civil Aviation, Article 84, December 7, 1944, 15 UNTS 295; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Article 14(1); Convention on the Prevention and Punishment of the Crime of Genocide, Article IX, December 9, 1948, 78 UNTS 277; International Convention on the Elimination of All Forms of Racial Discrimination, Article 22, December 21, 1965, 660 UNTS 1; Convention against Discrimination in Education, Article 8, December 14, 1960, 429 UNTS 93; Convention Relating to the Status of Refugees, Article 38, July 28, 1951, 189 UNTS 137; Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, Article 1, April 18, 1961, 500 UNTS 241; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, Article 13, December 14, 1973, 1035 UNTS 167.

145 "International Convention Against the Taking of Hostages," Reservation of the IRI, United Nations, last visited August 11, 2023, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-5&chapter=18&clang=_en.

146 "Notice Concerning Termination of Eligibility for E-1 and E-2 Nonimmigrant Classification Based on Treaty of Amity with Iran," Department of Homeland Security, US Citizenship and Immigration Services, January 22, 2020, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-01110.pdf>.

147 Treaty of Amity, Economic Relations, and Consular Rights, Iran-United States, Article XXIII(3), August 15, 1955, 284 UNTS 93. See also: "Notice Concerning Termination of Eligibility for E-1 and E-2 Nonimmigrant Classification Based on Treaty of Amity with Iran."

148 See, e.g.: Special Rapporteur on the Situation of Human Rights in Iran, "Situation of Human Rights in the Islamic Republic of Iran," paragraphs 31–34, A/76/160, July 16, 2021, <https://undocs.org/en/A/76/160>; Special Rapporteur on the Situation of Human Rights in Iran, "Situation of Human Rights in the Islamic Republic of Iran," paragraphs 24–26, A/HRC/46/60, January 11, 2021, <https://undocs.org/en/A/hrc/46/60>; Human Rights Council, "Summary of Stakeholder Submissions to Iran's Universal Periodic Review," paragraphs 73, 77–78, A/HRC/WG.6/20/IRN/3, August 7, 2014, <https://undocs.org/pdf?symbol=en/A/HRC/WG.6/20/IRN/3>; International Federation for Human Rights, *The Hidden Side of Iran: Discrimination against Ethnic and Religious Minorities*, 8–10, 12–18, 20, October 2010, <https://www.fidh.org/IMG/pdf/IrandiscrimLDDH1545a.pdf>; Human Rights Council, "Compilation of UN Information on the Islamic Republic of Iran for Its Universal Periodic Review Third Cycle," paragraph 52, A/HRC/WG.6/34/IRN/2, August 30, 2019, <https://undocs.org/A/HRC/WG.6/34/IRN/2>.



A general view of the Great Hall of Justice at the International Court of Justice in The Hague. Paul Vreeker via Reuters Connect

with the IRI, and subsequently submit the dispute to the ICJ if negotiations do not resolve the issues.¹⁴⁹

The ICJ observed in *The Gambia v. Myanmar* case that, for a treaty like the Genocide Convention, all states parties have a “common interest” in compliance with its obligations.¹⁵⁰ A similar interpretation could apply to treaties that the IRI has ratified, like the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention against Discrimination in Education. Such treaties also concern obligations to the international community as a whole, and implicate a common interest in ensuring compliance by, at a minimum, all states that have ratified them. Any other state that is party to these, or any of the treaties identified in the prior section, could bring

a case against the IRI at the ICJ if they believe the IRI has violated its legal obligations under the relevant treaty.

Cases the IRI Could File at the ICJ

The IRI could also file claims at the ICJ against other states under the aforementioned treaties or under its recent declaration accepting the compulsory jurisdiction of the court, though only as relates to state immunities. The IRI has threatened to file a claim against the United States for its treatment of Iranian diplomats, including denying visas to some of its representatives to the United Nations in New York and restricting the travel of those who are issued visas.¹⁵¹ The IRI could argue that US treatment of its UN diplomats violates the Convention on the Privileges

149 See, e.g.: International Convention on the Elimination of All Forms of Racial Discrimination, Article 22; Convention against Discrimination in Education, Article 8.

150 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Preliminary Objections, Judgment, paragraphs 106–114.

151 “Iran to Sue US If It Keeps Harassing Iranian Diplomats: Spokesman,” Islamic Republic of Iran Ministry of Foreign Affairs, January 17, 2021, <https://en.mfa.gov.ir/portal/newsview/624665>. See also: Vahid Bazaar, “US Mistreatment Towards Iran’s Representatives to the UN: Is Iran Initiating the Third Case against the US at the ICJ?” EJIL:Talk!, July 20, 2021, <https://www.ejiltalk.org/us-mistreatment-towards-irans-representatives-to-the-un-is-iran-initiating-the-third-case-against-the-us-at-the-icj/>.

and Immunities of the United Nations, which requires that UN representatives be granted privileges, immunities, and facilities, and be exempt from immigration restrictions.¹⁵²

Advisory Opinions Related to Iran at the ICJ

UN organs and agencies could also request advisory opinions from the ICJ related to issues with the IRI. Interesting legal questions involving the IRI, which could be appropriate for advisory opinions, include: the legality of the IRI's method of proxy warfare in Syria; the legality of the US assassination of Qasem Soleimani; the legality of Israeli killings of Iranian nuclear scientists; and the legality of the IRI's actions targeting protesters, such as criminalizing speech and issuing death sentences for minor offenses. However, the likelihood of a UN organ or agency requesting advisory opinions on any of these matters is low, both for political reasons and because advisory opinions are not often requested.¹⁵³

Recommendations

- To support the joint application filed by Canada, Sweden, Ukraine, and the United Kingdom on July 5,

2023, instituting proceedings under the 1971 Montreal Convention at the ICJ against the IRI for the Flight PS752 shutdown, other interested states should file an Article 63 declaration of intervention. This is similar to what has been done, on an unprecedented scale, in support of Ukraine in *Ukraine v. Russia*.¹⁵⁴ Currently, there are 188 parties to the Montreal Convention.¹⁵⁵ Any of these could file a declaration of intervention to submit their views on the interpretation of any provisions of the convention at issue in the case.¹⁵⁶

- Following the precedent set by The Gambia in *The Gambia v. Myanmar*, where the ICJ confirmed that, for a treaty like the Genocide Convention, all states parties have a common interest in compliance with its obligations, states parties to conventions like the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention against Discrimination in Education could initiate proceedings over violations of obligations owed by the IRI under these and other applicable conventions.¹⁵⁷

152 Convention on the Privileges and Immunities of the United Nations, Article IV, section 11, February 13, 1946, 1 UNTS 15, 90 UNTS 327. The ICJ has jurisdiction over disputes arising under the convention. Convention on the Privileges and Immunities of the United Nations, Article VIII, section 30.

153 The Security Council has only requested one advisory opinion, and the General Assembly sixteen. See: "Organs and Agencies Authorized to Request Advisory Opinions," International Court of Justice, last visited August 11, 2023, <https://www.icj-cij.org/en/organs-agencies-authorized>.

154 A record thirty-three states intervened in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russia)* before the ICJ, the highest number of interventions in the court's history. See: Wigard, et al., "Keeping Score."

155 "List of Parties to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation Signed at Montreal on 23 September 1971."

156 Statute of the International Court of Justice, Article 63 ("1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith. 2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it").

157 See, e.g.: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Preliminary Objections, Judgment, paragraphs 106–114.

International People's Tribunals

IPTs are unofficial courts, convened by civil society, which hold hearings related to specific events or issues. There have already been two separate IPTs related to Iran—one concerning the killing of thousands of political prisoners in Iran's prisons in the 1980s, and one concerning the IRI's brutal response during the November 2019 protests. These constitute an important source of evidence and testimony, some of which have later been used in domestic prosecutions like the Hamid Noury trial in Sweden. Given the latest wave of violence and impunity for the IRI, a new IPT could serve an important role in documenting, preserving, and analyzing the regime's role in the gross human rights violations committed since September 2022.

Overview

IPTs have no official judicial power granted by states.¹⁵⁸ They gain their legitimacy from what is referred to as "a 'residual responsibility' [...] to respond to unanswered calls

for action."¹⁵⁹ As IPTs have no official judicial power, they cannot, for example, compel witnesses to testify or order arrests or compensation, although they may recommend further actions.¹⁶⁰ Instead, they are used to give voices to victims and survivors, to generate public awareness and attention, and to establish facts and gather and preserve evidence that may then be used in later criminal or civil cases.¹⁶¹ Because there are no official guidelines for such tribunals, they are free to decide on the setup of the hearings for themselves, depending on their objectives.¹⁶² This can lead to considerable variation among the tribunals—for example, as to whether a defense is heard and whether the findings determine state or individual responsibility.¹⁶³

Despite the differences, IPTs tend to follow the same general format. Typically, a group of international lawyers serve as the prosecution and lay their case before a panel of international law experts serving as judges.¹⁶⁴ The panel also hears testimony from witnesses and subject-matter experts.¹⁶⁵ Frequently, the offending countries or individuals will be invited to offer a defense.¹⁶⁶ After the close

158 Azadeh Shahshahani, "People's Tribunals: Holding Power to Account," National Lawyers Guild, March 8, 2021, <https://www.nlg.org/wp-content/uploads/2021/03/Peoples-Tribunals.pdf>.

159 Aldo Zammit Borda, Stefan Mandelbaum, and Marlinea Stegbauer, "Legitimation Crisis or Access to Justice? On the Authority of International People's Tribunals," *OpinioJuris*, July 24, 2021, <http://opiniojuris.org/2021/07/24/legitimation-crisis-or-access-to-justice-on-the-authority-of-international-peoples-tribunals/>.

160 "The International Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, Judgment," China Tribunal, March 1 2020, paragraphs 484–499, https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf (recommending certain actions by the UN, foreign governments, and individuals); "Transcript of Oral Judgment," Women's Caucus for Gender Justice, December 4, 2001, paragraphs 147–149, <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html> (recommending certain actions by the offending government and the UN); "Session on State Crimes Allegedly Committed in Myanmar against the Rohingyas, Kachins and Other Groups: Judgment," Malaysia: Permanent Peoples' Tribunal, 2017, 50–53, <http://permanentpeopletribunal.org/wp-content/uploads/2017/11/PPT-on-Myanmar-Judgment-FINAL.pdf> (recommending certain actions by the offending state's government and its neighbors, by international and regional organizations, and by other members of the international community).

161 Borda, et al., "Legitimation Crisis or Access to Justice?"; Shahshahani, "People's Tribunals"; Shadi Sadr, "Aban Will Not Die: How Truth Remains a Powerful Weapon against the Islamic Republic," Atlantic Council *IranSource*, January 26, 2022, <https://www.atlanticcouncil.org/blogs/iransource/aban-will-not-die-how-truth-remains-a-powerful-weapon-against-the-islamic-republic/>.

162 "The Permanent Peoples' Tribunal," People's Tribunal on the Murder of Journalists, last visited September 22, 2022, <https://ptmurderofjournalists.org/what-is-a-peoples-tribunal/>.

163 For example, compare: "Frequently Asked Questions," People's Tribunal on the Murder of Journalists, last visited September 26, 2022, <https://ptmurderofjournalists.org/faq/> (noting that the accused states were invited to participate and, if they did not appear, a defense was appointed *ex officio*) and "Aban Tribunal Fact Sheet," Aban Tribunal, last visited September 26, 2022, <https://abantribunal.com/wp-content/uploads/2022/01/Aban-Tribunal-Fact-Sheet.pdf> (noting that the defendants were invited to attend and present a defense but declined); compare: "Final Stage Closing Report," Iran Tribunal, March 17, 2013, <https://irantribunal.com/sessions/final-session/final-stage-closing-report/> (finding state responsibility) and "Transcript of Oral Judgment" (finding both state and individual responsibility).

164 See, e.g.: "About Us," Iran Atrocities Aban Tribunal, last visited September 27, 2022, <https://abantribunal.com/about-us/>; "Frequently Asked Questions" People's Tribunal on the Murder of Journalists; "Prosecution's Biography," Iran Tribunal, last visited September 27, 2022, <https://irantribunal.com/sessions/court/prosecution-biography/>; "The Prosecutors," International Tribunal 1965, last visited September 27, 2022, <https://www.tribunal1965.org/en/1965-tribunal-hearings-the-prosecutors/>.

165 See, e.g.: "Testimonies," Iran Atrocities Aban Tribunal, last visited September 27, 2022, <https://abantribunal.com/category/testimonies/>; "Frequently Asked Questions," People's Tribunal on the Murder of Journalists; "Tribunal Witness Statements," Iran Tribunal, last visited September 27, 2022, <https://irantribunal.com/sessions/court/tribunal-witness-statements/>; "The Expert Witnesses," International Tribunal 1965, last visited September 27, 2022, <https://www.tribunal1965.org/en/1965-tribunal-hearings-the-expert-witnesses/>; "New Statute of the Permanent Peoples' Tribunal," Permanent Peoples Tribunal, last visited September 27, 2022, Article 16, http://permanentpeopletribunal.org/wp-content/uploads/2019/05/Statute-of-the-PPT_ENG_FINAL.pdf.

166 See, e.g.: "Aban Tribunal Fact Sheet," Aban Tribunal, last visited September 26, 2022, <https://abantribunal.com/wp-content/uploads/2022/01/Aban-Tribunal-Fact-Sheet.pdf>; "Frequently Asked Questions," People's Tribunal on the Murder of Journalists; Peter Cluskey, "Tribunal to Hear Claims of Atrocities in Iran," *Irish Times*, October 24, 2012, <https://www.irishtimes.com/news/tribunal-to-hear-claims-of-atrocities-in-iran-1.556749>; "New Statute of the Permanent Peoples' Tribunal," Article 17.

of the hearing, the panel makes a judgment, which is released as a report along with recommendations.¹⁶⁷

IPTs developed from the 1966 Russell Tribunal, an “opinion” tribunal developed by philosopher Bertrand Russell, which held the US government accountable for war crimes committed in Vietnam.¹⁶⁸ Jean-Paul Sartre and other “internationally recognized academics, scientists, lawyers, former heads of state and peace activists” served as judges over two sessions.¹⁶⁹ They heard from victims and experts, such as weapons experts, and conducted fact-finding trips to Vietnam.¹⁷⁰ The panel found the US government and its allies that actively participated in the war (Australia, New Zealand, South Korea, Thailand, the Philippines, and Japan) guilty of all charges, including genocide.¹⁷¹ The tribunal was credited with bolstering the antiwar movement, along with opposition to colonialism and imperialism.¹⁷² Italian politician Lelio Basso, along with the Bertrand Russell Peace Foundation, went on to establish a second Russell Tribunal focused on human rights abuses in Latin America, which held three sessions from 1974 to 1976.¹⁷³

Basso then established a Permanent Peoples’ Tribunal (PPT) in Bologna, Italy, in 1979.¹⁷⁴ Basso and others had hosted a conference in Algiers in 1976, which resulted in the creation of the Universal Declaration of the Rights of

People (“Algiers Charter”) on which the PPT’s activities are based.¹⁷⁵ The PPT has hosted fifty-one sessions as of May 2023, and set up its first Opinion Tribunal on Myanmar.¹⁷⁶ Several IPTs have also been established in the tradition of the Russell Tribunals, including the Russell Tribunals on Human Rights in Psychiatry, on Palestine, on Iraq, on Eastern Ukraine, and on Kashmir.¹⁷⁷ Other notable examples of ad hoc people’s tribunals include the People’s Tribunal on the Murder of Journalists, the Court: a People’s Tribunal of the Citizens of the World (the Ukraine Tribunal), Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China; the Indian People’s Tribunal; the International People’s Tribunal on Human Rights and Justice in Indian-Administered Kashmir; the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery; the International People’s Tribunal 1965; and the World Tribunal on Iraq.¹⁷⁸

IPTs on Iran

There have been two people’s tribunals for Iran: the Iran Tribunal, which covered the killings of thousands of political prisoners in Iran’s jails in the 1980s, and the Aban Tribunal, which covered the violent state crackdown on the November 2019 protests in Iran.

- 167 See, e.g.: “51st Session on the Murder of Journalists: Summary of the Judgment,” Permanent Peoples’ Tribunal, 2022, https://ptmurderofjournalists.org/wp-content/uploads/2022/09/PPT_JOURN_JUDGMENT_SUMMARY_21_09_2022_UNEDITED_VERSION.pdf; “Final Stage Closing Report,” “IPT Concluding Statement: Indonesia is Responsible for Ten Gross Human Rights Violations of 1965 and Afterwards,” International People’s Tribunal 1965, July 20, 2016, <https://www.tribunal1965.org/en/ipt-concluding-statement-indonesia-is-responsible-for-ten-gross-human-rights-violations-of-1965-and-afterwards/>.
- 168 “The Permanent Peoples’ Tribunal”; “Algiers Charter,” Permanent Peoples’ Tribunal, last visited September 22, 2022, <https://permanentpeopletribunal.org/algiers-charter/?lang=en>; Cody J. Foster, “Did America Commit War Crimes in Vietnam?” *New York Times*, December 1, 2017, <https://www.nytimes.com/2017/12/01/opinion/did-america-commit-war-crimes-in-vietnam.html>.
- 169 Foster, “Did America Commit War Crimes in Vietnam?”
- 170 Ibid.
- 171 Umberto Tulli, “Wielding the Human Rights Weapon against the American Empire: the Second Russell Tribunal and Human Rights in Transatlantic Relations,” *Journal of Transatlantic Studies* 19 (2021), 215–237, <https://link.springer.com/article/10.1057/s42738-021-00071-4>.
- 172 Foster, “Did America Commit War Crimes in Vietnam?”; Tulli, “Wielding the human rights weapon against the American empire: the second Russell Tribunal and human rights in transatlantic relations,” 215–237.
- 173 Tulli, “Wielding the Human Rights Weapon against the American Empire,” 215–237.
- 174 “Home,” Permanent Peoples’ Tribunal, last visited September 22, 2022, <http://permanentpeopletribunal.org/category/jurisprudence/?lang=en>.
- 175 Ibid.; “Algiers Charter,” Permanent People’s Tribunal; “Algiers Charter: Universal Declaration of the Rights of Peoples,” Permanent Peoples’ Tribunal, July 4, 1976, <http://permanentpeopletribunal.org/wp-content/uploads/2016/06/Carta-di-algeri-EN-2.pdf>.
- 176 “Jurisprudence,” Permanent Peoples’ Tribunal, last visited May 25, 2023, <http://permanentpeopletribunal.org/category/jurisprudence/?lang=en>; “About,” People’s Tribunal on Myanmar, last visited May 25, 2023, <https://tribunalonmyanmar.com/about/>.
- 177 “Closing Hearing: Delivery of the Judgment,” People’s Tribunal on the Murder of Journalists, September 19, 2022, <https://ptmurderofjournalists.org/closing-hearing/>; “Press Release: The Court’s First Session & the Ukraine Tribunal,” Court of Citizens of the World, last visited July 28, 2023, <https://www.the-court.eu/announcement>; “Russell Tribunal on Human Rights in Psychiatry, Freedom of Thought,” last visited September 26, 2022, https://www.freedom-of-thought.de/rt/rt_erklaerung.htm; “Home,” Russell Tribunal on Palestine, last visited September 26, 2022, <https://www.russelltribunalonpalestine.com/en/index.html>; “Russell Tribunal on Kashmir,” Kashmir Civitas, last visited September 26, 2022, <https://kashmircivitas.com/russell-tribunal/>; Foster, “Did America Commit War Crimes in Vietnam?”
- 178 “The International Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, Judgment,” paras. 469-484; “Judgment,” China Tribunal, last visited September 23, 2022, <https://chinatribunal.com/final-judgment/>; “About Us,” Indian People’s Tribunal, last visited September 23, 2022, <https://web.archive.org/web/20100602195347/http://www.iptindia.org/about>; “Articles in the Reports Category,” Indian People’s Tribunal, last visited September 23, 2022, <https://web.archive.org/web/20110219122448/http://www.iptindia.org/category/reports>; “Buried Evidence: Unknown, Unmarked, and Mass Graves in Indian-Administered Kashmir,” International People’s Tribunal on Human Rights and Justice in Indian-Administered Kashmir, 2009, paragraphs 10, 69–86, <https://kashmirprocess.org/reports/graves/BuriedEvidenceKashmir.pdf>; “Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir,” International People’s Tribunal on Human Rights and Justice in Indian-Administered Kashmir, 2012, paragraphs 7–8, 218–226, https://kashmirprocess.org/reports/alleged_Perpetrators.pdf; “Transcript of Oral Judgment”; “IPT Concluding Statement: Indonesia is Responsible for Ten Gross Human Rights Violations of 1965 and Afterwards”; “Declaration of Jury of Conscience,” World Tribunal on Iraq, June 27, 2005, <https://web.archive.org/web/20070518005936/http://www.worldtribunal.org/main/?b=91>.



Nahid Shirpish, whose son, Pouya Bakhtiari was killed during the November 2019 protests is testifying before the Iran's Atrocities (Aban) Tribunal in London. Source: Brian Fani

For the Iran Tribunal, a group of family members of those executed in the 1980s formed a campaign in September 2007 to investigate the killings, which led to the formation of the tribunal.¹⁷⁹ While it was based on the model of the Russell Tribunal, the Russell Tribunal itself declined to be involved.¹⁸⁰ The Iran Tribunal first held a truth commission at Amnesty International's Human Rights Action Centre in London in June 2012, collecting witness statements and publishing its findings online.¹⁸¹ The Iran Tribunal then held hearings at the Peace Palace in the Hague in October 2012.¹⁸² The IRI was

invited to attend by means of a letter dated September 12, 2012, and sent to its then ambassador in The Hague, but the IRI did not acknowledge the letter.¹⁸³

The Iran Tribunal ultimately found the IRI guilty of gross violations of human rights against its citizens, and accountable for the commission of crimes against humanity.¹⁸⁴ The evidence from the final judgment was later used by Swedish prosecutors when indicting Hamid Noury, who was a deputy prosecutor during the 1988 massacre, in the first-ever

179 "About Iran Tribunal," Iran Tribunal, last visited September 22, 2022, <https://irantribunal.com/about-us/about-iran-tribunal/>.

180 Ibid.

181 "Justice for the Victims of Iranian Massacre," *Guardian*, June 14, 2012, <https://www.theguardian.com/world/2012/jun/14/justice-victims-iranian-massacre>; "The Iran Tribunal: On the Abuse and Mass Killings of Political Prisoners in Iran, 1981–1988," Iran Tribunal, 2013, <https://irantribunal.com/wp-content/uploads/2019/11/Commission-Report-Website.pdf>.

182 "Iran's Survivors to Recall Horrors in The Hague at Tribunal," Iran Tribunal, October 15, 2012, <https://irantribunal.com/sessions/court/irans-survivors-to-recall-horrors-in-the-hague-at-tribunal/>.

183 "Prosecutor v. Islamic Republic of Iran: Judgement," Iran Tribunal, February 5, 2013, <https://irantribunal.com/wp-content/uploads/2019/08/Iran-Tribunal-Judgment.pdf>.

184 "Final Stage Closing Report."

universal jurisdiction case against a representative of the IRI for core international crimes.¹⁸⁵

In 2020, three NGOs (Justice for Iran, Iran Human Rights, and Ensemble Contre la Peine de Mort) established the Aban Tribunal.¹⁸⁶ The tribunal consisted of two lawyers serving as co-counsel, who laid out evidence against 160 Iranian officials alleged to be involved in crimes against humanity.¹⁸⁷ While the accused officials were invited to present their defenses, none participated.¹⁸⁸ A panel of six lawyers served as judges and issued their final judgment in November 2022.¹⁸⁹ The panel came to the “inescapable conclusion” that the IRI devised a “criminal plan/strategy calculated to brutally punish and deter all those who participated in or supported the protests together with members of their families.”¹⁹⁰ The panel also found that the supreme leader, the president and the Supreme National Security Council were all implicated in the criminal plan and resulting violence.¹⁹¹

Recommendations

- Civil society must continue to convene IPTs for situations in which justice is lacking and victims have not been heard, coordinating among the tribunals where appropriate.
- IPTs must engage in best practices to protect victims and to ensure that the evidence gathered can be used in subsequent proceedings, for example by using trauma-informed interviewing techniques, by following best practices for the collection and preservation of evidence, and by mandating that a defense is presented.
- States should engage and cooperate with IPTs, including states being examined by the IPTs.
- IPTs must also ensure that due process and fair-trial rights are respected, especially when the accused do not appear or participate.
- The UN Office of the High Commissioner for Human Rights, and other relevant UN bodies and interested parties, should work to develop a convention with guidelines for IPTs, in order to encourage and standardize their use, ensuring that victims are protected and that evidence can be preserved and used in other contexts.
- Jurisdictions—including both domestic and international jurisdictions—must investigate crimes raised in IPTs, and should use the evidence gathered during the hearings where they are able and where it is appropriate.
- The UN must support IPTs and engage with them to further their work in accountability—for example, by issuing reports from Special Rapporteurs on the relevant subjects.
- All subjects of IPT recommendations must implement the recommended actions where they are able.

185 Sadr, “Aban Will Not Die.” Sadr discusses both the judgment (“The Judgement,” Iran Tribunal, last visited September 22, 2022, <https://irantribunal.com/sessions/court/the-judgement>;) and the indictment (“Indictment of Hamid Nouri,” Iran Human Rights Documentation Center, December 13, 2021, <https://iranhrdc.org/indictment-of-hamid-nouri/>). See also: “Iran: Conviction of Former Iranian Official over Involvement in 1988 Prison Massacres Landmark Step Towards Justice,” Amnesty International, July 14, 2022, <https://www.amnesty.org/en/latest/news/2022/07/iran-conviction-of-former-iranian-official-over-involvement-in-1988-prison-massacres-landmark-step-towards-justice/>.

186 “About Us,” Iran Atrocities Aban Tribunal; “Statute for Aban Tribunal,” Iran Atrocities Aban Tribunal, last visited September 22, 2022, <https://abantribunal.com/wp-content/uploads/2022/02/Aban-Tribunal.-Statute.-Final.12thOctober2021.pdf>.

187 “About Us,” Iran Atrocities Aban Tribunal.

188 Ibid.; “Aban Tribunal Fact Sheet,” Aban Tribunal, last visited September 26, 2022, <https://abantribunal.com/wp-content/uploads/2022/01/Aban-Tribunal-Fact-Sheet.pdf>.

189 “About Us,” Iran Atrocities Aban Tribunal; “Judgment,” International People’s Tribunal on Iran’s Atrocities, November 1, 2022, <https://abantribunal.com/wp-content/uploads/2022/11/Aban-Judgment-Final.pdf>.

190 “Judgment,” International People’s Tribunal on Iran’s Atrocities, paragraph 48.

191 Ibid., paragraphs 50–61.

United Nations Mechanisms

The IRI has ratified few human rights treaties, and has accepted even fewer complaint protocols and procedures under the international treaties it has signed, and the jurisdiction international tribunals can exercise over it is limited to specific circumstances. However, it is a UN member state and actively engages with other states within the UN system, routinely, and controversially, holding office in different committees and bodies.¹⁹² Under these circumstances, sometimes only a UN mechanism is competent to examine human rights violations and international crimes committed by the IRI. Given the unique role in pursuing truth and accountability UN mechanisms have with respect to the IRI, this section will cover several relevant avenues under the UN system: the Human Rights Council, Special Rapporteurs, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, investigative bodies, and mechanisms, as well as the Independent International Fact-Finding Mission on the Islamic Republic of Iran.

Human Rights Council

On March 15, 2006, the UN General Assembly adopted Resolution 60/251, to create the Human Rights Council (HRC) as one of its subsidiary organs.¹⁹³ The HRC replaced the Commission on Human Rights (CHR), which fell under the Economic and Social Council.¹⁹⁴ Under Resolution 60/251, the HRC was tasked with “assum[ing], review[ing] and, where necessary, improv[ing] and rationaliz[ing] all mandates, mechanisms and responsibilities” of the CHR.¹⁹⁵ The resolution also included a non-exhaustive

list of the HRC’s other mandated tasks, such as making recommendations for “the further development of international law in the field of human rights” and undertaking a “universal periodic review” of each state.¹⁹⁶

In 2007, the HRC adopted Resolution 5/1 on institution building, laying out the HRC’s agenda, framework, methods of work, and other details.¹⁹⁷ It also established the Advisory Committee, consisting of eighteen experts serving as a think tank for the HRC; the Complaint Procedure, through which Working Groups review alleged human rights violations and bring “consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms” to the HRC’s attention; and the Special Procedures, a roster of human rights experts who “report and advise on human rights from a thematic or country-specific perspective.”¹⁹⁸ Finally, it established the Universal Periodic Review to evaluate each country’s adherence to human rights standards.¹⁹⁹

The HRC consists of forty-seven member states, which the UN General Assembly elects, taking into account candidate states’ “contribution to the promotion and protection of human rights, as well as their voluntary pledges and commitments in this regard.”²⁰⁰ There is “equitable geographical distribution” among the seats, with thirteen seats each for African states and Asia-Pacific states; eight seats for Latin American and Caribbean states; seven seats for Western European states and states not otherwise covered; and six seats for Eastern European states.²⁰¹ Each member serves for a three-year period, and has “a responsibility to uphold high human rights standards.”²⁰²

192 Annalisa Merelli, “How to Remove Iran from the UN Commission on the Status of Women” *Quartz*, November 30, 2022, <https://qz.com/how-is-iran-still-on-the-un-commission-on-the-status-of-1849833018>.

193 United Nations General Assembly, “Resolution Adopted by the General Assembly on 15 March 2006,” A/RES/60/251, April 3, 2006, undocs.org/A/RES/60/251. For more on the UN’s structure, see: “The United Nations System,” United Nations, 2021, https://www.un.org/en/pdfs/un_system_chart.pdf.

194 UNGA Resolution 60/251 (2006).

195 *Ibid.*

196 *Ibid.*, paragraph 5. These also included promoting human rights education; providing a forum for dialogue on relevant issues; promoting states’ implementation of human rights; contributing to the prevention of human rights violations; working with governments, regional organizations, national human rights institutions, and civil society; making recommendations on the promotion and protection of human rights; and submitting an annual report to the General Assembly.

197 United Nations Human Rights Council, “Institution-Building of the United Nations Human Rights Council,” A/HRC/RES/5/1, June 18, 2007, http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc.

198 Special Procedures had originally been established by the CHR. *Ibid.*, Annex paragraphs 39–109; “Advisory Committee,” United Nations Human Rights Council, last visited January 18, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/advisory-committee/hrcac-index>; “Frequently Asked Questions,” United Nations Human Rights Council, last visited January 18, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>; “Special Procedures of the Human Rights Council,” United Nations Office of the High Commissioner for Human Rights, last visited January 18, 2023, <https://www.ohchr.org/en/special-procedures-human-rights-council>.

199 HRC Resolution 5/1 (2007), Annex paragraphs 1–38.

200 “Membership of the Human Rights Council,” United Nations Human Rights Council, last visited January 18, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/membership>.

201 *Ibid.*

202 *Ibid.* If a state has served for two consecutive terms, it is not eligible for immediate re-election.



“Flags alley” is seen outside the United Nations building during a session of the Human Rights Council in Geneva, Switzerland. DENIS BALIBOUSE via Reuters Connect

The HRC has been credited with major successes, including the “strength and influence” of the Special Procedures and contributions to accountability efforts, as well as challenges including bloc voting and inadequate attention to certain situations.²⁰³ It has also faced particular criticism for the membership of states known to be complicit in human rights abuses.²⁰⁴ For example, certain states and organizations have expressed concern and disappointment with

the announcement that the Iranian ambassador to the UN in Geneva will head the HRC Social Forum in November 2023.²⁰⁵ While a two-thirds vote in the General Assembly can suspend a country from the HRC for the commission of “gross and systematic violations of human rights,” it has only happened twice (with Libya in 2011 and Russia in 2022), despite past and current membership that includes Venezuela, China, Eritrea, Cuba, Bangladesh, and Vietnam.²⁰⁶

203 Salil Shetty, “10 Years of the United Nations’ Human Rights Council: Remarks by Salil Shetty,” Amnesty International, February 29, 2016, <https://www.amnesty.org/en/latest/news/2016/02/10-years-of-the-united-nations-human-rights-council/>; Lauren Vriens, “Troubles Plague UN Human Rights Council,” Council on Foreign Relations, last updated May 13, 2009, <https://www.cfr.org/backgrounder/troubles-plague-un-human-rights-council>. See also: “Keeping the Momentum: One Year in the Life of the Human Rights Council,” Human Rights Watch, September 22, 2011, <https://www.hrw.org/report/2011/09/22/keeping-momentum/one-year-life-un-human-rights-council>.

204 Shetty, “10 Years of the United Nations’ Human Rights Council”; Vriens, “Troubles Plague UN Human Rights Council.”

205 “UNHRC: Retract Appointment of Iranian Ambassador to Chair Social Forum,” Center for Human Rights in Iran, May 11, 2023, <https://iranhumanrights.org/2023/05/unhrc-retract-appointment-of-iranian-ambassador-to-chair-social-forum/>; Patrick Wintour, “Iran Expected to Execute Three Protesters over Killing of Police Officers,” *Guardian*, May 12, 2023, <https://www.theguardian.com/world/2023/may/12/iran-expected-to-execute-three-protesters-over-killing-of-police-officers>; Melanie Swan, “Iran Wins UN Human Rights Role Despite Wave of Executions,” *Times*, May 12, 2023, <https://www.thetimes.co.uk/article/iran-wins-un-human-rights-role-despite-wave-of-executions-c0rbs0hfb>. For an official explanation of the procedure that led to this appointment, see: “Letter of Response from the HRC President to the Permanent Representative of Israel,” Human Rights Council, May 12, 2023, <https://hrcmeetings.ohchr.org/PresidencyBureau/BureauRegionalGroupsCorrespondence/Correspondence/Letter%20of%20response%20from%20the%20HRC%20President%20to%20the%20Permanent%20Representative%20of%20Israel.pdf>.

206 UNGA Resolution 60/251 (2006); “Russia Suspended From Human Rights Council For ‘Systematic Abuses,’” RadioFreeEurope/RadioLiberty, April 7, 2022, <https://www.rferl.org/a/united-nations-russia-rights-council-suspension/31791510.html>; Tamara Taraciuk Broner and Martina Rapido Ragozzino, “Venezuela Denied a Seat at the UN Human Rights Council,” Human Rights Watch, October 13, 2022, <https://www.hrw.org/news/2022/10/13/venezuela-denied-seat-un-human-rights-council>.

Universal Periodic Review

The UPR is a process through which the human rights records of all UN member states are scrutinized according to a rotating schedule of cycles, each of which consists of a four-and-half-year period, with forty-eight states reviewed per year.²⁰⁷ The fourth cycle will last from 2022–2027.²⁰⁸ The UPR Working Group, consisting of the forty-seven members of the HRC, conducts the reviews, and three states (the “troika”) serve as rapporteurs.²⁰⁹ The reviews examine information provided by the state under review; information from other UN experts and entities, such as those under the Special Procedures; and information from other stakeholders, such as human rights organizations.²¹⁰ During a UPR Working Group meeting, UN member states can engage in dialogue with the state under review.²¹¹ The troika then prepares an outcome report, which is adopted during a Working Group session.²¹² The report is then adopted at an HRC plenary session, at which time the state under review can also respond to issues, questions, and recommendations and member states, observer states, and other stakeholders can voice their opinions on the outcomes.²¹³

The UPR guarantees that every state is routinely subjected to close examination and discussion. This eliminates the possibility of one frequent tactic used by states such as China and Russia to block the UN from addressing their

human rights records: using their sway (and Security Council veto power) to block votes, thereby preventing the use of tools such as HRC debates and referrals of situations to the ICC.²¹⁴ However, the UPR has struggled with implementation, and many states have inadequately addressed and responded to the recommendations they received.²¹⁵ The HRC is addressing this through, among other things, a Voluntary Fund for Implementation established in 2007 and additional tools developed by the Office of the High Commissioner of Human Rights to help with implementation during the third cycle and dedicating the fourth cycle to “enhanced implementation and follow up.”²¹⁶

Iran and the UPR

Iran’s prior reviews under the UPR took place in February 2010, October 2014, and November 2019.²¹⁷ Its review during the fourth cycle is expected to take place during the HRC’s forty-eighth session, from January to February 2025.²¹⁸ The tentative deadline for civil-society organizations and other UN entities to send stakeholder submissions is June 27, 2024.²¹⁹ The UN Office of the High Commissioner for Human Rights (OHCHR) has already published guidelines for civil-society organizations wishing to make stakeholder submissions in the fourth cycle.²²⁰

In each of its three reviews so far, Iran has engaged with the process, and submitted both a country report and

207 “Basic Facts about the UPR,” United Nations Human Rights Council, last visited January 18, 2023, <https://www.ohchr.org/en/hr-bodies/upr/basic-facts>.

208 “Cycles of the Universal Periodic Review,” United Nations Human Rights Council, last visited January 18, 2023, <https://www.ohchr.org/en/hr-bodies/upr/cycles-upr>.

209 “Basic Facts about the UPR.”

210 Ibid.

211 Ibid.

212 Ibid.

213 Ibid.

214 See, e.g.: Philip Remler, “Russia at the United Nations: Law, Sovereignty, and Legitimacy,” Carnegie Endowment for International Peace, January 22, 2020, <https://carnegieendowment.org/2020/01/22/russia-at-united-nations-law-sovereignty-and-legitimacy-pub-80753>; “The Costs of International Advocacy,” Human Rights Watch, September 5, 2017, <https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights>; “UN Human Rights Council Rejects Debate on Xinjiang,” France24, October 6, 2022, <https://www.france24.com/en/live-news/20221006-un-human-rights-council-rejects-debate-on-xinjiang>; “Russia, China Block Security Council Referral of Syria to International Criminal Court,” *UN News*, May 22, 2014, <https://news.un.org/en/story/2014/05/468962>.

215 “Overview of the Universal Periodic Review Mechanism,” International Commission of Jurists, 2014, <https://www.icj.org/wp-content/uploads/2014/02/UPR.pdf>.

216 “Supporting States through the UPR Voluntary Fund for Implementation,” UPR Info, September 27, 2022, <https://www.upr-info.org/en/news/supporting-states-through-upr-voluntary-fund-implementation>; “Fourth Cycle of the UPR Starts on Monday,” UPR Info, November 3, 2022, <https://www.upr-info.org/en/news/fourth-cycle-upr-starts-monday>; OHCHR, “Universal Periodic Review Working Group to Examine Human Rights Records of 13 States at Its Forty-Second Session from 23 January to 3 February 2023,” United Nations Office of the High Commissioner for Human Rights, January 18, 2023, <https://www.ohchr.org/en/press-releases/2023/01/universal-periodic-review-working-group-examine-human-rights-records-13>.

217 “Universal Periodic Review—Iran (Islamic Republic Of),” United Nations Human Rights Council, last visited January 18, 2023, <https://www.ohchr.org/en/hr-bodies/upr/ir-index>.

218 “Human Rights Council Universal Periodic Review (Fourth Cycle),” United Nations Human Rights Council, last visited January 18, 2023, https://www.ohchr.org/sites/default/files/Documents/HRBodies/UPR/UPR_4th_cycle.docx.

219 The date can be found on the calendar of tentative deadlines for stakeholders’ submissions for the fourth cycle, available for download on the fourth UPR webpage. “4th UPR Cycle: Contributions and Participation of ‘Other Stakeholders’ in the UPR,” United Nations Human Rights Council, last visited June 22, 2023, <https://www.ohchr.org/en/hr-bodies/upr/ngos-nhris>.

220 “Universal Periodic Review: A Guide for Civil Society for Fourth Cycle,” United Nations Office of the High Commissioner for Human Rights, last visited June 22, 2023, <https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/2022-10-24/UPR-4th-cycle-civil-society-guide.pdf>. See also: “Universal Periodic Review (Fourth Cycle): Information and Guidelines for Relevant Stakeholders’ Written Submissions,” United Nations Office of the High Commissioner for Human Rights, last visited June 22, 2023, https://www.ohchr.org/sites/default/files/2022-03/StakeholdersTechnicalGuidelines4thCycle_EN.pdf.



An overview of the Human Rights and Alliance of Civilizations Room during Iran's Universal Periodic Review in 2010. Balibouse via Reuters Connect

responses to the outcomes.²²¹ However, each time it had a significant number of recommendations and rejected a high proportion of them. Across the three cycles, Iran has received 808 recommendations, only 396 of which

it accepted in full.²²² Iran has further failed to implement the accepted recommendations.²²³ In 2019, Amnesty International found that Iran made progress on a “small number” of recommendations from the second cycle,

221 United Nations Human Rights Council, “National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Islamic Republic of Iran,” A/HRC/WG.6/7/IRN/1, November 18, 2009, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session7/IR/A_HRC_WG6_7_IRN_1_E.pdf; United Nations Human Rights Council, “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution of 16/21: Islamic Republic of Iran,” A/HRC/WG.6/20/IRN/1, August 4, 2014, <https://undocs.org/A/HRC/WG.6/20/IRN/1>; United Nations Human Rights Council, “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution of 16/21: Islamic Republic of Iran,” A/HRC/WG.6/34/IRN/1, August 28, 2019, <https://undocs.org/A/HRC/WG.6/34/IRN/1>; United Nations Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran: Addendum,” A/HRC/14/12/Add.1, June 3, 2010, <https://undocs.org/A/HRC/14/12/Add.1>; United Nations Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran: Addendum,” A/HRC/28/12/Add.1, March 2, 2015, <https://undocs.org/A/HRC/28/12/Add.1>; United Nations Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran: Addendum,” A/HRC/43/12/Add.1, February 20, 2020, <https://undocs.org/A/HRC/43/12/Add.1>.

222 Iran accepted 123 out of 188 recommendations during the first cycle, 130 out of 291 in the second cycle, and 143 out of 329 in the third cycle. HRC, “Report of the Working Group on the Universal Periodic Review* Islamic Republic of Iran: Addendum,” paragraph 1, A/HRC/14/12/Add.1, June 3, 2010, ; HRC, “Report of the Working Group on the Universal Periodic Review*: Islamic Republic of Iran: Addendum,” paragraph 1, A/HRC/28/12/Add.1, March 2, 2015; HRC, “Report of the Working Group on the Universal Periodic Review*: Islamic Republic of Iran: Addendum,” paragraph 1, A/HRC/43/12/Add.1, February 20, 2020.

223 See, e.g.: “Iran Universal Periodic Review Outcome Statement,” Human Rights Watch, March 12, 2020, <https://www.hrw.org/news/2020/03/12/iran-universal-periodic-review-outcome-statement>; “Officials’ Ongoing Abuses Highlighted in Submission for Third Cycle of Iran’s UPR,” Justice for Iran, April 22, 2019, <https://justice4iran.org/13018/>; “Iran: Worsening Situation for Free Expression Must Be Addressed in Upcoming UPR,” ARTICLE 19, April 30, 2019, <https://www.article19.org/resources/iranupr2019/>; “Iran: Failing on All Fronts,” Amnesty International, June 20, 2019, <https://www.amnesty.org/en/documents/mde13/0573/2019/en/>.

“failed to make progress on others,” and took “regressive steps with regards to some.”²²⁴ Even in one instance of a positive development—during the second cycle, the first acknowledgment by the Islamic Republic of Iran of the torture and ill-treatment of the LGBTQIA+ community—the government only accepted some of the relevant recommendations and did not implement others, and by the third cycle, Iran remained “an extremely hostile and dangerous environment for LGBT individuals and activists.”²²⁵

Recommendations

Human Rights Council Membership and Leadership Positions

- HRC member states must decline to vote for membership of states that do not meet the HRC’s requirements for upholding human rights. Recognizing that most states have imperfect human rights records, this exclusionary standard should apply to member states that are extreme outliers in committing atrocity crimes and gross human rights violations. When member states commit such violations in a sustained and unrepentant manner, the General Assembly must vote to remove them. Such states should not hold leadership positions at a UN body whose mission is to promote and protect human rights around the world.
- HRC member states must take a more proactive role during the nomination and appointment process to bodies under the HRC umbrella, like the Social Forum, to avoid appointing the representatives of states responsible for grave human rights violations to leadership roles.

Universal Periodic Review

- Civil-society organizations should send stakeholder submissions for the fourth cycle of the UPR concerning Iran before June 27, 2024.

- The HRC must continue to prioritize the implementation of recommendations, and should consider, for example, publishing regularly updated and detailed monitoring information.
- Stakeholders, including both member states and external organizations, must continue to give careful attention to the information they provide ahead of each state’s review, to ensure that all relevant information is available. They must also ensure that they continue to urge states to accept the recommendations of their reviews, even in the years following.
- During its review in the fourth cycle, the IRI must commit to accepting all recommendations and fully implement those recommendations immediately afterward. In the preceding years, it should implement any remaining recommendations from the third cycle, including recommendations it previously rejected.

Special Rapporteurs

Special Rapporteurs are independent human rights experts who work under the Special Procedures of the HRC, alongside Working Groups and Independent Experts. They are tasked with reporting and advising on certain topics, either thematic or country-specific ones.²²⁶ These positions are unpaid, and consist of three-year terms that can be “reconducted” for another three years.²²⁷ While each Special Procedure has its own mandate, they are generally responsible for engaging in country visits, sending communications to countries or others regarding specific cases, and engaging in advocacy, often through public reports.²²⁸ Special Rapporteurs frequently collaborate with one another and with others under the Special Procedures—for example, on communications, on reports, and on public responses to crises.²²⁹

During country visits, Special Rapporteurs assess the human rights situation of that country on the ground,

224 “Iran: Failing on All Fronts.”

225 “Iran Indicates a Move Toward Ending Anti-LGBT Torture,” Justice for Iran, March 19, 2015, <https://justice4iran.org/10043/>; “Submission to the UN Universal Periodic Review 34th Session of the UPR Working Group- 2019,” 6rang, July 5, 2019, <https://6rang.org/english/3069/>.

226 “Special Procedures of the Human Rights Council.”

227 Ibid.

228 Ibid.

229 For example, on December 23, 2022, the Special Rapporteurs on extrajudicial, summary, or arbitrary executions; in the field of cultural rights; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders; on the situation of human rights in the Islamic Republic of Iran; on torture and other cruel, inhuman, or degrading treatment or punishment; on the rights to freedom of peaceful assembly and of association; and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and members of the Working Group on Arbitrary Detention, jointly condemned the execution of a demonstrator in Iran and “raised the alarm about Iranian artists charged for crimes carrying the death penalty.” “Iran: UN Experts Condemn Execution of Protesters, Raise Alarm about Detained Artists,” United Nations Office of the High Commissioner for Human Rights, press release, December 8, 2022, <https://www.ohchr.org/en/press-releases/2022/12/iran-un-experts-condemn-execution-protestor-raise-alarm-about-detained>.

focusing on the issues affecting their mandate.²³⁰ This can involve meetings with authorities, civil-society organizations, UN and other intergovernmental agencies, the press, and any human rights victims.²³¹ After the visit, the Special Rapporteurs publish their findings, conclusions, and recommendations in a report to the HRC.²³² In communications—which are often sent to governments, but may also be sent to intergovernmental organizations, private companies, or others—Special Rapporteurs respond to reported allegations of past, ongoing, or potential human rights violations.²³³ These letters explain the allegations and ask for clarification, adding recommendations where necessary and reminding the receiving party of its obligations.²³⁴ Finally, Special Rapporteurs use their platform to raise public awareness of issues, including through public statements and engagement with partners, but also through preparing thematic studies; developing human rights standards and guidelines; participating in conferences and other events; and consulting with other actors.²³⁵

Special Rapporteurs are credited with impacts such as the development and shaping of international human rights norms and the elevation of victims’ and survivors’ voices.²³⁶ However, there are ongoing concerns about how certain states’ failures to cooperate can hinder Special Rapporteurs’ effectiveness by refusing to implement their

recommendations.²³⁷ While this is not generally considered to make their roles less necessary—including those of country-specific mandates for noncooperative states—it limits the impact that these mandates could otherwise have.²³⁸

Iran and Special Rapporteurs

On March 24, 2011, the HRC adopted Resolution 16/9 to establish a Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (“Special Rapporteur on Iran”).²³⁹ Previously, a Special Representative had been established in 1984 under Resolution 1984/54, but in 2002 the UN Commission on Human Rights declined to renew the position.²⁴⁰ The most recent mandate holder as of the time of writing of this report, Javid Rehman, was appointed on July 6, 2018.²⁴¹ While the Special Rapporteur on Iran is focused exclusively on all relevant human rights situations in Iran, many thematic Special Rapporteurs have mandates that overlap. In situations in Iran where a thematic mandate is implicated, that Special Rapporteur will often sign onto any relevant communications or press statements.²⁴²

After the IRI’s brutal response to the protests sparked by Amini’s death became evident, Special Rapporteur

230 “Country and Other Visits: Special Procedures,” United Nations Office of the High Commissioner for Human Rights, last visited January 13, 2023, <https://www.ohchr.org/en/special-procedures-human-rights-council/country-and-other-visits>.

231 Ibid.

232 Ibid.

233 “What Are Communications?” United Nations Office of the High Commissioner for Human Rights, last visited January 17, 2023, <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications>.

234 “What Are Communications?”

235 “Special Procedures of the Human Rights Council.”

236 See, e.g.: Marc Limon and Ted Piccone, “Human Rights Special Procedures: Determinants of Influence, Universal Rights Group and Foreign Policy at Brookings,” Brookings, March 2014, <https://www.brookings.edu/wp-content/uploads/2016/06/un-human-rights-experts-evaluation-piccone.pdf>; “Joint Letter Calling on the HRC to Renew the Mandate of the Special Rapporteur on Iran,” Human Rights Watch, Marcy 24, 2022, <https://www.hrw.org/news/2022/03/24/joint-letter-calling-hrc-renew-mandate-special-rapporteur-iran>; Philip Alston, Bassam Khawaja, and Rebecca Riddell, “Much Ado about Poverty: the Role of a UN Special Rapporteur,” *Bristol University Press* 27, 3 (2019), <https://bristoluniversitypressdigital.com/view/journals/jpsj/27/3/article-p423.xml>.

237 Goli Ameri, “What Will It Take for the UN to Stand With the People of Iran?” Freedom House, November 9, 2022, <https://freedomhouse.org/article/what-will-it-take-un-stand-people-iran>; Limon and Piccone, “Human Rights Special Procedures.”

238 Limon and Piccone, “Human Rights Special Procedures.”

239 “Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran: Introduction,” United Nations Office of the High Commissioner for Human Rights, last visited January 13, 2023, <https://www.ohchr.org/en/special-procedures/sr-iran>; United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council: Situation of Human Rights in the Islamic Republic of Iran,” A/HRC/RES/16/9, April 8, 2011, <https://www.undocs.org/A/HRC/RES/16/9>.

240 United Nations Commission on Human Rights, “Human Rights Situation in the Islamic Republic of Iran,” E/CN.4/RES/1985/39, March 13, 1985, <https://www.refworld.org/docid/3b00f0b0c.html> (noting Resolution 1984/54 establishing the position); “Iran: U.N. Fails to Condemn Rights Abuses,” Human Rights Watch, April 21, 2002, <https://www.hrw.org/news/2002/04/21/iran-un-fails-condemn-rights-abuses>.

241 “Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran: Introduction.”

242 For example, Special Rapporteurs who have signed onto communications to Iran include, inter alia, those in the field of cultural rights; on extrajudicial summary or arbitrary executions; on freedom of religion or belief; on minority issues; on human rights of migrants; on independence of judges and lawyers; on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; on the promotion and protection of human rights and fundamental freedoms while countering terrorism; on the right to freedom of opinion and expression; on the promotion of truth, justice, reparation, and guarantees of non-recurrence; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on the right to education; on the right to privacy; on the rights of persons with disabilities; on the rights to freedom of peaceful assembly and association; on the situation of human rights defenders; on torture and other cruel, inhuman or degrading treatment or punishment; on violence against women, its causes and consequences; on the right to food; on the right to adequate housing; on the rights to water and sanitation; and on contemporary forms of racism. “Communication Search,” United Nations Office of the High Commissioner for Human Rights, last visited January 17, 2023, <https://spcommreports.ohchr.org/TmSearch/TMDocuments>. See also: “Iran: UN Experts Condemn Execution of Protesters, Raise Alarm about Detained Artists.”



Javaid Rehman was appointed as Special Rapporteur on the situation of human rights in the Islamic Republic of Iran in 2018. REUTERS via Reuters Connect

Rehman publicly called for the establishment of an independent investigative mechanism to examine all human rights violations in Iran that led up to her death, and that have occurred since.²⁴³ He highlighted the “[c]hronic impunity and lack of redress for previous violations” in the country.²⁴⁴ In March 2023, at the fifty-second session of the HRC, the Special Rapporteur presented his latest report on the situation of human rights in the IRI.²⁴⁵ In the report, he noted that more than 520 people have been killed in the context of the current protests, including seventy-one children, and that hundreds of protesters have been severely injured, like the dozens of protesters who have been

blinded or lost their eyes from direct shots to the head.²⁴⁶ He urged that the responsibility of senior IRI officials for instigating this violence not be ignored.²⁴⁷ On the nature of the violations as a whole, the Special Rapporteur explained that the “scale and gravity of the violations committed by Iranian authorities, especially since the death of Ms Amini, points to the possible commission of international crimes, notably the crimes against humanity of murder, imprisonment, enforced disappearances, torture, rape and sexual violence, and persecution.”²⁴⁸ Iran’s response to the report at the session was to accuse other states of abusing human rights mechanisms, and the Special Rapporteur of

243 “Iran: Special Rapporteur Calls for Effective Accountability for Deaths in Recent Protests,” United Nations Office of the High Commissioner for Human Rights, press release, October 26, 2022, <https://www.ohchr.org/en/press-releases/2022/10/iran-special-rapporteur-calls-effective-accountability-deaths-recent>.

244 Ibid.

245 “Human Rights Council Hears about Reports of Massacres of Civilians in Myanmar and Possible Crimes against Humanity in Iran Following Mass Protests in Both Countries,” United Nations Office of the High Commissioner for Human Rights, March 20, 2023, <https://www.ohchr.org/en/news/2023/03/human-rights-council-hears-about-reports-massacres-civilians-myanmar-and-possible>. For the full report, see “A/HRC/52/67: Situation of Human Rights in the Islamic Republic of Iran—Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Javaid Rehman,” United Nations Office of the High Commissioner for Human Rights, February 7, 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5267-situation-human-rights-islamic-republic-iran-report-special>.

246 “Human Rights Council Hears about Reports of Massacres of Civilians in Myanmar and Possible Crimes against Humanity in Iran Following Mass Protests in Both Countries”; Patrick Wintour, “Iran Rights Violations Amount to Crime against Humanity, Says UN Expert,” *Guardian*, March 20, 2023, <https://www.theguardian.com/world/2023/mar/20/iran-rights-violations-crime-against-humanity-un-expert>.

247 “Human Rights Council Hears about Reports of Massacres of Civilians in Myanmar and Possible Crimes against Humanity in Iran Following Mass Protests in Both Countries.”

248 Wintour, “Iran Rights Violations Amount to Crime against Humanity, Says UN Expert.”

disregarding his mandate and of lacking impartiality, calling his report a “tragic novel.”²⁴⁹

The government of Iran has not been fully uncooperative. It has responded to more than half of the communications it received between December 2010 and December 2022, and issued a standing invitation for country visits on July 24, 2002.²⁵⁰ However, only a handful of Special Rapporteurs have visited since 2002, and only one since 2005.²⁵¹ At least nine mandates have unsuccessfully requested a visit, and the country-specific Special Rapporteur’s requests to visit have been repeatedly denied.²⁵² The Special Rapporteur on Iran has instead visited a handful of European and North American countries to conduct interviews for fact-finding purposes.²⁵³ However, in May 2022, Iran allowed the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights to visit, marking the first country visit since 2005.²⁵⁴ The trip—the groundwork for which was reportedly “laid by a private law firm close to the Iranian regime”—was to assess the impact of external sanctions on human rights in Iran, rather than actions taken by the Iranian government.²⁵⁵ It further sparked controversy over concerns that the Iranian government would only allow the Special Rapporteur to meet certain “state-approved organizations and individuals,” and would use the findings to deflect from its own actions.²⁵⁶

Recommendations

- While it is imperative that Special Rapporteurs maintain their independence, the United Nations must ensure that each mandate is properly staffed and funded so that it is able to robustly carry out its duties, particularly when faced with challenging situations and noncooperative governments.
- The government of the IRI must cooperate with Special Rapporteurs, including by immediately allowing all who are requesting country visits to undertake them. Special Rapporteurs, in turn, must devote adequate time and energy to situations in Iran, despite the ongoing lack of cooperation.
- Special Rapporteurs should continue to collaborate with one another along with other relevant bodies, including, *inter alia*, the Working Group on Arbitrary Detention, Working Group on Enforced Disappearances, and the Independent Fact-Finding Mission on the Islamic Republic of Iran, to ensure that they are unified on messaging, to avoid the duplication of efforts, and to lend their expertise wherever possible.
- Special Rapporteurs should continue to shed light on human rights violations in Iran as much as possible

249 “Human Rights Council Hears about Reports of Massacres of Civilians in Myanmar and Possible Crimes against Humanity in Iran Following Mass Protests in Both Countries.”

250 According to the UN’s Communication Search, between December 1, 2010, and December 23, 2022, Iran has replied to 178 communications out of the 307 it received. “Communication Search”; “Standing Invitations,” United Nations Office of the High Commissioner for Human Rights, last visited January 13, 2023, <https://spinternet.ohchr.org/StandingInvitations.aspx?lang=en>.

251 It has allowed country visits from the Working Group on Arbitrary Detention (2003) and the Special Rapporteurs on the freedom of expression (2003), on migrants (2004), on violence against women (2005), on housing (2005), and on unilateral coercive measures (2022). The Special Rapporteurs on freedom of religion (2003), on food (2015), and on health (2017 and 2019) have been extended invitations, but have not ultimately visited. “View Country Visits of Special Procedures of the Human Rights Council since 1998,” United Nations Office of the High Commissioner for Human Rights, last visited January 17, 2023, <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&Lang=en>.

252 The Special Rapporteurs on minority issues; on freedom of religion; on extrajudicial, summary, or arbitrary executions; on food; on torture; on freedom of assembly; on freedom of expression; and on independence of judges, as well as the Independent Expert on democratic international order and the Working Groups on arbitrary detention and on discrimination against women and girls, requested visits. “View Country Visits of Special Procedures of the Human Rights Council since 1998”; United Nations Human Rights Council, “Situation of Human Rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran,” paragraph 2, A/HRC/43/61, January 28, 2020, <https://undocs.org/A/HRC/43/61>; United Nations General Assembly, “Situation of Human Rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran,” paragraph 7, A/71/418, September 30, 2016, <https://undocs.org/A/71/418>; United Nations Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Ahmed Shaheed*,” paragraph 6, A/HRC/28/70, May 28, 2015, <https://undocs.org/A/HRC/28/70>.

253 The Special Rapporteur on Iran has visited France, Germany, the Netherlands, Norway, Denmark, the United Kingdom, Canada, Italy, Sweden, Austria, and the United States. “View Country visits of Special Procedures of the Human Rights Council since 1998”; HRC, “Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,” paragraph 2, A/HRC/43/61; UNGA, “Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran,” paragraph 7, A/71/418; HRC, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Ahmed Shaheed*,” paragraph 6, A/HRC/28/70.

254 “A/HRC/51/33/Add.1: Visit to the Islamic Republic of Iran— Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena Douhan,” United Nations Office of the High Commissioner for Human Rights, August 17, 2022, <https://www.ohchr.org/en/documents/country-reports/ahrc5133add1-visit-islamic-republic-iran-report-special-rapporteur>.

255 Ibid.; Golnaz Esfandiari, “Visit To Iran by Controversial UN Rapporteur Provokes Concerns,” RadioFreeEurope/RadioLiberty, May 13, 2022, <https://www.rferl.org/a/iran-un-rapporteur-propaganda/31848567.html>; Faramarz Davar, “Why Tehran Is Rolling Out the Red Carpet for the UN’s Sanctions Rapporteur,” IranWire, April 25, 2022, <https://iranwire.com/en/politics/103355-why-tehran-is-now-rolling-out-the-red-carpet-for-a-un-special-rapporteur/>.

256 Esfandiari, “Visit To Iran By Controversial UN Rapporteur Provokes Concerns”; Davar, “Why Tehran Is Rolling Out the Red Carpet for the UN’s Sanctions Rapporteur”; “Iranian Activists to UN Sanctions Rapporteur: Please Speak to Independents Too,” IranWire, May 12, 2022, <https://iranwire.com/en/politics/103864-iranian-activists-to-un-sanctions-rapporteur-please-speak-to-independents-too/>.

by publishing relevant reports, but also through concerted efforts to speak out against new developments and a sustained media presence on the overall situation.

Working Group on Arbitrary Detention

Overview

WGAD was established in 1991 by the former Commission on Human Rights.²⁵⁷ While it is under the Special Procedures umbrella, its founding resolution tasks it with the functions of both Special Procedures experts and treaty bodies. This means that, on top of issuing communications and engaging in country visits as an expert body, it also issues deliberations (akin to treaty bodies' General Comments), investigates individual cases, and issues opinions on its case findings.²⁵⁸ It is the only non-treaty body tasked as such.²⁵⁹

Because international instruments have never clearly defined "arbitrary detention," the WGAD defined the term itself in Resolution 1997/50 to mean a deprivation of liberty that is contrary to international provisions laid out in the Universal Declaration of Human Rights (UDHR) and other relevant treaties.²⁶⁰ It then developed criteria drawing from provisions in the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the Body of Principles for the Protection of All Persons under Any Form of Detention

or Imprisonment.²⁶¹ These criteria divide arbitrary detentions into five categories, which the WGAD then uses to classify cases it finds to be arbitrary.²⁶²

When investigating individual cases, the WGAD relies on a five-stage adversarial process that invites information from the relevant state, as well as additional information from the original source in response to anything the government submits.²⁶³ In part because of this adversarial process, the resulting opinions are considered legally binding under international human rights law, and are recognized as authoritative by judicial institutions such as the European Court of Human Rights.²⁶⁴ The WGAD also has an urgent appeal procedure for cases in which there are credible allegations that someone is arbitrarily detained and the continued detention poses a threat to the person's health or life. In urgent appeals, the WGAD sends a letter to the concerned state through diplomatic channels, requesting that the detained person's fundamental rights, including the right not to be arbitrarily detained, be respected. These appeals are sent on humanitarian grounds, and are not a judgment on whether the deprivation of liberty is, in fact, an arbitrary detention.²⁶⁵ While urgent appeals are initially confidential, they are all automatically made public once sixty days have elapsed.²⁶⁶

The WGAD does not have a formal enforcement mechanism. When the WGAD finds a case to constitute an arbitrary detention, it offers recommendations to the government.²⁶⁷ It also requests information on the steps the government

257 United Nations Commission on Human Rights, "Question of Arbitrary Detention," E/CN.4/RES/1991/42, March 5, 1991, <https://www.refworld.org/docid/3b00f0a118.html>.

258 "The Working Group on Arbitrary Detention: Revised Fact Sheet No. 26," United Nations Office of the High Commissioner for Human Rights, February 8, 2019, <https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/FactSheet26.pdf>; "Deliberations," United Nations Office of the High Commissioner for Human Rights, last visited August 13, 2023, <https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/deliberations> (Deliberations are positions of principle on thematic issues and are meant to offer guidance to governments to prevent arbitrary detention); "The UN Working Group on Arbitrary Detention as a Venue for Challenging Arbitrary Immigration Detention: A GDP Briefing with Elina Steinerte," Global Detention Project, November 25, 2021, <https://www.globaldetentionproject.org/the-un-working-group-on-arbitrary-detention-as-a-venue-for-challenging-arbitrary-immigration-detention-a-gdp-briefing-with-elina-steinerte> (relating deliberations to comments); CHR, "Question of Arbitrary Detention," E/CN.4/RES/1991/42.

259 "The Working Group on Arbitrary Detention: Revised Fact Sheet No. 26."

260 Ibid.

261 Ibid.

262 Category I covers detentions with no legal basis; Category II covers detentions resulting from the exercise of fundamental rights; Category III covers situations where there was insufficient observance of fair trial norms; Category IV relates to prolonged administrative custody for asylum seekers, immigrants, or refugees; and Category V covers discrimination-based detentions. "The Working Group on Arbitrary Detention: Revised Fact Sheet No. 26."

263 The process involves five stages: bringing the matter to the attention to the WGAD; offering the government the chance to refute the allegations; offering the source an opportunity to make comments on the government's response; the WGAD's issuance of an opinion; and follow-up. "The Working Group on Arbitrary Detention: Revised Fact Sheet No. 26"; Jared Genser, *The UN Working Group on Arbitrary Detention: Commentary and Guide to Practice* (New York: Cambridge University Press, 2019), 77–81, <https://www.perseus-strategies.com/wp-content/uploads/2020/04/Jared-Genser-The-UN-Working-Group-on-Arbitrary-Detention-Cambridge-University-Press-2019.pdf>.

264 "Julian Assange Arbitrarily Detained by Sweden and the UK, Expert Panel Finds," United Nations Office of the High Commissioner for Human Rights, February 5, 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17013&LangID=E>.

265 "Complaints and Urgent Appeals: Working Group on Arbitrary Detention," United Nations Office of the High Commissioner for Human Rights, last visited June 30, 2023, <https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/complaints-and-urgent-appeals>.

266 "The Working Group on Arbitrary Detention: Revised Fact Sheet No. 26."

267 For example, recommendations may include that the government release the victim, pay reparations and compensation, and investigate the circumstances surrounding the arbitrary detention. United Nations Working Group on Arbitrary Detention, "Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-First Session, 6–10 September 2021," A/HRC/WGAD/2021/27, October 8, 2021, https://www.ohchr.org/sites/default/files/2021-11/A_HRC_WGAD_2021_27_AdvanceEditedVersion.pdf.



An Iranian woman walks past a mural of a former US hostage outside the former US embassy in Tehran. Caren Firouz via Reuters Connect

has taken within six months.²⁶⁸ Further, governments are expected to inform the WGAD about follow-up actions taken on these recommendations. The WGAD keeps the HRC informed of progress on cases of arbitrary detention. It also informs the HRC of any difficulties in the implementation of its recommendations as well as, notably, failure by concerned states to take action.²⁶⁹ The WGAD has also escalated

situations through other means, for example within the UN by referring cases to other UN experts and externally by filing an amicus curiae brief with the Federal High Court of Nigeria.²⁷⁰ Its documents also serve as credible evidence in support of cases at other venues, particularly regional human rights courts and domestic courts.²⁷¹ These documents also serve to bolster advocacy campaigns.²⁷²

268 “The Working Group on Arbitrary Detention: Revised Fact Sheet No. 26.”

269 United Nations Human Rights Council, “Methods of Work of the Working Group on Arbitrary Detention,” paragraph 20, A/HRC/36/38, July 13, 2017, <https://undocs.org/en/A/HRC/36/38>.

270 See, e.g.: United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Fifth Session, 12–16 August 2019,” paragraphs 35, 41, 44, 50, 60, A/HRC/WGAD/2019/32, September 9, 2019, <https://undocs.org/en/A/HRC/WGAD/2019/32>; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-First Session,” paragraph 62, A/HRC/WGAD/2021/27; “Joint Amicus Curiae Submission by the United Nations Human Rights Council’s Working Group on Discrimination against Women and Girls and the Working Group on Arbitrary Detention on the Case of Joy Moses & 5 ORS vs. THE MINISTER, FCT & 13 ORS,” United Nations Human Rights Special Procedures, February 3, 2020, https://www.ohchr.org/Documents/Issues/Women/WG/Amicus_Brief_1_Nigeria.pdf.

271 For example, the European Court of Human Rights, Inter-American Court of Human Rights, United States District Court for the District of Columbia, and United Kingdom Immigration Appeal Tribunal have all cited the WGAD in their opinions. “Case of Husayn (Abu Zubaydah) v Poland,” European Court of Human Rights, July 24, 2014, App.no. 7511/13, paragraph 210, <https://hudoc.echr.coe.int/eng?i=001-146047>; “Vélez Lóor v. Panama, Judgment of November 23, 2010, Preliminary Objections, Merits, Reparations and Costs,” Inter-American Court of Human Rights, November 23, 2010, footnote 236, paragraphs 107, 117, 169, 170, https://www.corteidh.or.cr/docs/casos/articulos/seriec_218_ing.pdf; “Hekmati v Islamic Republic of Iran,” September 29, 2017, 278 F. Supp. 3d 145, 155, <https://casetext.com/case/hekmati-v-islamic-republic-of-iran>; “HD v Secretary of State for the Home Department,” July 30, 2004, UKIAT 00209, [https://www.baillii.org/cgi-bin/format.cgi?doc=/uk/cases/UKIAT/2004/00209.html&query=\(%22working\)+AND+\(group\)+AND+\(on\)+AND+\(arbitrary\)+AND+\(detention%22\)](https://www.baillii.org/cgi-bin/format.cgi?doc=/uk/cases/UKIAT/2004/00209.html&query=(%22working)+AND+(group)+AND+(on)+AND+(arbitrary)+AND+(detention%22)).

272 See, e.g.: “USA: Authorities Must Promptly Implement UN Decision and Release Steven Donziger,” Amnesty International, September 30, 2021, <https://www.amnesty.org/en/documents/amr51/4814/2021/en/>.

Iran and the WGAD

With respect to Iran, the WGAD has already issued forty-eight opinions related to the detention of 120 individuals.²⁷³ The Iranian government has only responded in fifteen cases—fewer than one-third.²⁷⁴ The WGAD found all of the detentions to have been arbitrary.²⁷⁵ Further, the WGAD identified several trends specific to Iran within these opinions, including an “emerging pattern” of arbitrary detention of dual and foreign nationals or those “affiliated with different pro-democracy institutions of the West”; a “continuing pattern of harassment, intimidation

and imprisonment” of human rights defenders and prisoners of conscience; and patterns of targeted abuse of members of the Baha’i community.²⁷⁶ The WGAD also indicated on fourteen occasions that Iran’s repeated arbitrary detention following distinct patterns could rise to the level of crimes against humanity, and referred the cases to the Special Rapporteur on Iran.²⁷⁷

Beyond the individual cases, the WGAD has been a signatory on 153 communications to Iran—more than any other country.²⁷⁸ The WGAD also visited Iran in 2003 and reported in 2005 that Iran had implemented some of its

- 273 To calculate the total number of opinions and people concerned, the authors visited the WGAD Database, set the date range to cover the period from the creation of the WGAD to the time of writing of this report, May 2023, selected “Iran (Islamic Republic of)” under “State/Entity” and clicked the “Search” button. The data were then exported to an Excel file, where the final calculations were carried out. Please note that two individuals were the subject of multiple opinions. The final number of individuals has been adjusted to reflect that. “Opinion Search,” United Nations Working Group on Arbitrary Detention, last visited May 25, 2023, <https://wgad-opinions.ohchr.org/Search>.
- 274 The IRI responded in a timely manner in the following fourteen cases, denoted by the final WGAD opinion numbers: 30/2001; 8/2003; 14/2006; 19/2006; 26/2006; 4/2008; 20/2011; 21/2011; 58/2011; 2/2016; 52/2018; 33/2019; 83/2020; 29/2021. The IRI also submitted a response with respect to WGAD Opinion 9/2017, but this was submitted past the deadline, so the WGAD did not have to treat it as it does government responses submitted in a timely manner, though it was permitted to consider the response. The full text of all of these opinions may be retrieved by the opinion number on the WGAD Database.
- 275 In the forty-eight opinions, including for the individuals who were the subject of multiple opinions, the WGAD found forty-one Category III violations, thirty-six Category II violations, twenty-one Category I violations, and sixteen Category V violations. These totals were calculated by the authors from the data exported from the WGAD Database.
- 276 United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Seventy-Eighth Session, 19–28 April 2017,” paragraphs 39–40, A/HRC/WGAD/2017/7, May 30, 2017, <https://undocs.org/en/A/HRC/WGAD/2017/7>; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Seventy-Sixth Session, 22–26 August 2016,” paragraph 48, A/HRC/WGAD/2016/28, September 21, 2016, <https://undocs.org/en/A/HRC/WGAD/2016/28>; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Seventy-Ninth Session, 21–25 August 2017,” paragraphs 43–44, A/HRC/WGAD/2017/49, September 22, 2017, <https://undocs.org/en/A/HRC/WGAD/2017/49>; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Second Session, 20–24 August 2018,” paragraphs 39, 82, A/HRC/WGAD/2018/52, September 21, 2018, <https://undocs.org/en/A/HRC/WGAD/2018/52>; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Fifth Session,” paragraph 49, A/HRC/WGAD/2019/32; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Fourth Session, 24 April–3 May 2019,” paragraphs 44, 78, A/HRC/WGAD/2019/51, October 8, 2019, <https://undocs.org/en/A/HRC/WGAD/2019/51>; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-First Session,” paragraphs 56–57, A/HRC/WGAD/2021/27; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Third Session, 19–23 November 2018,” paragraph 51, A/HRC/WGAD/2018/83, January 22, 2019, <https://undocs.org/A/HRC/WGAD/2018/83> (noting that the Secretary-General, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, and other special procedures mandate holders had also noted concern); United Nations Human Rights Council, “Opinions Adopted by the Working Group on Arbitrary Detention, Opinion No. 39/2008,” paragraph 16, A/HRC/13/30/Add.1, March 4, 2010, <https://undocs.org/en/A/HRC/13/30/Add.1> (noting that detentions are “consistent with a pattern of harassment, intimidation, expulsions from universities, confiscation of property and even persecution” targeting members of the Baha’i community).
- 277 WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Seventy-Sixth Session,” paragraphs 54–55, A/HRC/WGAD/2016/28; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Seventy-Fifth Session, 18–27 April 2016,” paragraphs 43–45, A/HRC/WGAD/2016/1, June 13, 2016, <https://undocs.org/en/A/HRC/WGAD/2016/1>; United Nations Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016,” paragraphs 33–34, A/HRC/WGAD/2016/25, September 21, 2016, <https://undocs.org/en/A/HRC/WGAD/2016/25>; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-First Session, 17–26 April 2018,” paragraphs 41–43, A/HRC/WGAD/2018/18, June 5, 2018, <https://undocs.org/en/A/HRC/WGAD/2018/18>; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Second Session,” paragraphs 86–88, A/HRC/WGAD/2018/52; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Third Session,” paragraph 68, A/HRC/WGAD/2018/83; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Fifth Session,” paragraphs 52, 72, A/HRC/WGAD/2019/32; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Fourth Session,” paragraph 80, A/HRC/WGAD/2019/51; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Ninth Session, 23–27 November 2020,” paragraph 85, A/HRC/WGAD/2020/83, March 4, 2021, <https://undocs.org/en/A/HRC/WGAD/2020/83>; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninetieth Session, 3–12 May 2021,” paragraph 79, A/HRC/WGAD/2021/15, June 23, 2021, <https://undocs.org/en/A/HRC/WGAD/2021/15>; WGAD, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-First Session,” paragraphs 61–62, A/HRC/WGAD/2021/27; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-First Session, 6–10 September 2021,” paragraphs 73, 76, A/HRC/WGAD/2021/29, October 1, 2021, <https://undocs.org/en/A/HRC/WGAD/2021/29>; United Nations Working Group on Arbitrary Detention, “Opinions Adopted by the Working Group on Arbitrary Detention at Its Ninety-Second Session, 15–19 November 2021,” paragraphs 33, 97, A/HRC/WGAD/2021/85, February 14, 2022, <https://undocs.org/en/A/HRC/WGAD/2021/85>.
- 278 Iran has responded to ninety-six. For all communications, see, “Communications Search.” The authors accessed the Communications Search database, set the date range from 1991 to the time of writing, May 2023, selected the mandate “Arbitrary Detention,” and exported the search results as an Excel file, where the data could be sorted and filtered to arrive at the final calculations.

recommendations.²⁷⁹ It has requested follow-up visits, but has not been granted any.²⁸⁰

Moving forward, WGAD opinions appear to be a reliable starting point for arbitrary detention cases. From publicly available sources, at least seventy-five of the detainees for whom the WGAD issued an opinion seem to have

been released, though it cannot be confirmed whether and how the WGAD opinions played a role in these releases.²⁸¹ Notably, at least thirteen detainees were later re-arrested or issued a travel ban, and at least another ten remain in custody.²⁸² However, the opinions, and especially the WGAD's identification of ongoing patterns, can serve to bolster other judicial processes. They have

- 279 The WGAD recommended as top priority reducing the proliferation of judicial decision-making bodies, reviewing the practice of solitary confinement, progressively freeing prisoners of conscience, guaranteeing due process, and reforming imprisonment for debt. In reporting on implementation, it noted that reforms included the establishment of Councils of Arbitration, a center for legal counsel, and offices to safeguard the rights of women and children; the reestablishment of the Office of the Public Prosecutor; and the drafting of bills on the establishment of a court for juveniles, on alternative punishments to imprisonments, on support of victims' relatives, on crime prevention, and on computer-related offenses. United Nations Commission on Human Rights, "Report of the Working Group on Arbitrary Detention," 2, 17–21, E/CN.4/3/Add.2, June 27, 2003, <https://undocs.org/E/CN.4/2004/3/Add.2>; United Nations Commission on Human Rights, "Report of the Working Group on Arbitrary Detention," paragraph 45, E/CN.4/2005/6, December 1, 2004, <https://undocs.org/E/CN.4/2005/6>.
- 280 See, e.g.: WGAD, "Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Third Session," paragraph 69, A/HRC/WGAD/2018/83; WGAD, "Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Fourth Session," paragraph 82, A/HRC/WGAD/2019/51.
- 281 The authors searched for publicly available information like news articles and official statements regarding the 120 individuals identified in the forty-eight WGAD opinions up to May 2023 to ascertain their status, if known. This information was added to the spreadsheet that was exported from the WGAD Database. These data are on file with the authors. For examples of publicly available information regarding some of these individuals, see: "Abbas Amir Entezam, Iranian Official Jailed as a Spy, Dies at 86," Associated Press, July 13, 2018, <https://www.nytimes.com/2018/07/13/obituaries/abbas-amir-entezam-iranian-official-jailed-as-a-spy-dies-at-86.html>; Trevor Mostyn, "Ezzatollah Sahabi Obituary," *Guardian*, June 30, 2011, <https://www.theguardian.com/world/2011/jun/30/ezzatollah-sahabi-obituary>; "Journalist Freed Two Years Early but Nine Others Still in Prison," Reporters Without Borders, February 7, 2005, <https://rsf.org/en/news/journalist-freed-two-years-early-nine-others-still-prison>; "Mohammad Maleki, Prominent Human Rights Activist Dies at 87," Iran Human Rights, December 2, 2020, <https://iranhr.net/en/articles/4513/>; "Iranian Human Rights Lawyer Abdolfattah Soltani Released from Jail," *Guardian*, November 21, 2018, <https://www.theguardian.com/world/2018/nov/21/iranian-human-rights-lawyer-abdolfattah-soltani-released-from-jail>; "Iran's Dead and Detained UPDATED," last visited August 12, 2023, *Guardian*, <https://www.theguardian.com/news/datablog/2010/jan/28/iran-dead-detained-protests-elections-spreadsheet>; "The Campaign to Free the Alaei Doctors," Physicians for Human Rights, last visited August 12, 2023, <https://phr.org/impact/alaei/>; "Political Commentator and Former Political Activist Released From Evin Prison," Center for Human Rights in Iran, April 27, 2017, <https://www.iranhumanrights.org/2017/04/political-commentator-and-former-political-activist-released-from-evin-prison/>; "Iran: Jailed for Defending Women Who Opposed Compulsory Veiling, Nasrin Sodoudeh Must Be Freed, Say UN Experts," United Nations Office of the High Commissioner for Human Rights, June 21, 2021, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27179&LangID=E>; "Iran Releases Rights Lawyer Sotoudeh For Five-Day Health Treatment Leave," RadioFreeEurope/RadioLiberty, July 22, 2021, <https://www.rferl.org/a/iran-sotoudeh-health-release/31371837.html>; "Kurdish-Iranian Human Rights Activist Released From Prison," Radio Farda, May 12, 2017, <https://en.radiofarda.com/a/28482561.html>; Sarah Pulliam Bailey, "Wife of Pastor Saeed Abedini, Jailed in Iran for His Faith, Explains the 'Shock' of His Release," *Washington Post*, January 16, 2016, <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/01/16/u-s-pastor-saeed-abedini-jailed-for-his-faith-reportedly-will-be-released-with-other-iranian-prisoners/>; Eric Tucker, "Once Tortured in Iranian Jail, Ex-Marine Fights Spy Claims," Associated Press, March 16, 2021, <https://apnews.com/article/amir-hekmati-ex-marine-fights-espionage-claims-cbf020839af517c0a3fd43bd49fb01b3>; "Khosro and Massoud Kordpour," US Virtual Embassy in Iran, last visited August 12, 2023, <https://ir.usembassy.gov/khosro-and-massoud-kordpour/>; "Prominent Activist Sentenced to Four Years in Prison for Protesting Downing of Ukrainian Passenger Plane," Center for Human Rights in Iran, July 27, 2020, <https://iranhumanrights.org/2020/07/prominent-activist-sentenced-to-four-years-in-prison-for-protesting-downing-of-ukrainian-passenger-plane/>; "Nazanin Zaghari-Ratcliffe," REDRESS, last visited August 12, 2023, <https://redress.org/casework/nazanin-zaghari-ratcliffe/>; "Iran/UK: Return of Kamal Foroughi after Unjust Detention Is 'Marvellous News,'" Amnesty International UK, April 1, 2020, <https://www.amnesty.org.uk/press-releases/iranuk-return-kamal-foroughi-after-unjust-detention-marvellous-news>; "Iran Prison Atlas," United for Iran, last visited August 12, 2023, <https://ipa.united4iran.org/en/search/#?data=prisoners>; "Renowned Activist Narges Mohammadi Arrested on Anniversary of Historic Protests," Center for Human Rights in Iran, November 12, 2021, <https://www.iranhumanrights.org/2021/11/renowned-activist-narges-mohammadi-arrested-on-anniversary-of-historic-protests/>; "Iran: UN Experts Welcome Release of Arash Sadeghi," United Nations Office of the High Commissioner for Human Rights, May, 11, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27082&LangID=E>; Colin Dwyer, "Released From Iranian Prison, U.S. Student Xiyue Wang Says He Was Held As A 'Hostage,'" NPR, June 11, 2020, <https://www.npr.org/2020/06/11/874079626/released-from-iranian-prison-u-s-student-xiyue-wang-says-he-was-held-as-a-hostag>; "Nizar Zakka: Iran Releases Lebanese US Resident Convicted of Spying," BBC, June 11, 2019, <https://www.bbc.com/news/world-middle-east-48593391>; Saeed Kamali Dehghan, "Iran Releases Washington Post Journalist Jason Rezaian in Prisoner Swap with US," *Guardian*, January 16, 2016, <https://www.theguardian.com/world/2016/jan/16/iran-releases-washington-post-journalist-jason-rezaian>.
- 282 At least one detainee was executed, and two died in custody. "Delara Darabi Executed in Iran," Amnesty International, May 1, 2009, <https://www.amnesty.org/en/latest/news/2009/05/delara-darabi-executed-iran-20090501/>; "Leading Dissident Writer in Iran Dies After 8 Months in Detention," *New York Times*, November 28, 1994, <https://www.nytimes.com/1994/11/28/world/leading-dissident-writer-in-iran-dies-after-8-months-in-detention.html>; Muhammad Sahimi, "Reza Hoda Saber, Political Prisoner, Dies after 9-Day Hunger Strike," PBS, June 13, 2011, <https://www.pbs.org/wgbh/pages/frontline/tehranbureau/2011/06/reza-hoda-saber-political-prisoner-dies-after-10-day-hunger-strike.html>; "Iranian Courts are Unlawfully Banishing Political Prisoners Into 'Prison Exile,'" Center for Human Rights in Iran, March 12, 2021, <https://www.iranhumanrights.org/2021/03/iranian-courts-are-unlawfully-banishing-political-prisoners-into-prison-exile/>; "Blogger Still Held Behind Bars Despite Completing Sentence as He Awaits Exile," Center for Human Rights in Iran, October 12, 2015, <https://www.iranhumanrights.org/2015/10/mohammad-reza-pourshajari/>; "Kurdish Political Prisoner Not Heard from for Weeks Since Announcing COVID Symptoms," Center for Human Rights in Iran, July 14, 2020, <https://www.iranhumanrights.org/2020/07/kurdish-political-prisoner-not-heard-from-for-weeks-since-announcing-covid-symptoms/>; "Elderly Political Prisoner's Early Release Blocked Despite Supreme Leader's Decree," Center for Human Rights in Iran, June 24, 2016, <https://www.iranhumanrights.org/2016/06/mohammad-hossein-rafiee-2-2/>; Farnaz Fassihi, "Outlook for Iran's Longest-Held Americans Echoes Broader Relationship: Dismal," *New York Times*, October 5, 2021, <https://www.nytimes.com/2021/10/05/world/middleeast/iran-namaz-prison.html>; "14 Academic, Rights Groups Call for Release of Iranian Swedish Scholar Ahmadreza Djalali," Center for Human Rights in Iran, July 14, 2021, <https://iranhumanrights.org/2021/07/14-academic-rights-groups-call-for-release-of-iranian-swedish-scholar-ahmadreza-djalali/>; "Human Rights Defender Atena Daemi on Indefinite Hunger Strike," Iran Human Rights, August 13, 2021, <https://iranhr.net/en/articles/4856/>; "Golorokh Ebrahimi Iraee," United States Commission on International Religious Freedom, last visited August 12, 2023, <https://www.uscirf.gov/religious-prisoners-conscience/current-rpocs/golorokh-ebrahimi-iraee>; Nadine Maenza and Dough Lamborn, "Iran Must Free Pastor Youcef Nadarkhani," *Hill*, August 5, 2020, <https://thehill.com/blogs/congress-blog/religious-rights/510758-iran-must-free-pastor-youcef-nadarkhani>; Patrick Wintour, "Why Does Austria Stay Silent over Dual National's Arrest Six Years Ago in Iran?" *Guardian*, January 1, 2022, <https://www.theguardian.com/world/2022/jan/01/kamran-ghaderi-why-does-austria-stay-silent-dual-nationals-arrest-six-years-ago-iran>.

already been used, *inter alia*, by an expert witness in a US civil case against Iran to establish Iran’s practice of hostage taking, by a British NGO as evidence of the need for targeted human rights sanctions, by a UK politician to push for international action, and by an Iranian-British dual national formerly held hostage in Iran in his evidence before the UK Foreign Affairs Select Committee Inquiry into the handling of state-level hostage situations.²⁸³ Future actions can build off these efforts by continuing to submit cases to the WGAD that fall into these patterns, and then using the resulting opinions to support cases before other bodies.

Recommendations

- Those submitting allegations should highlight how cases relate to and support previous WGAD findings on ongoing patterns, as well as unique details, particularly as they relate to new or emerging patterns.
- Those submitting legal documents should take care to note the WGAD’s findings, and use them as supporting evidence in other legal submissions.
- Where the WGAD identifies patterns such as potential crimes against humanity in a specific country or novel forms of arbitrary detention, it should raise the issue in a separate report, and identify ways within its mandate to escalate the issue beyond the UN experts.²⁸⁴
- The WGAD should establish a clear and consistent protocol for addressing reports of noncompliance with recommendations within the WGAD’s determinations.
- The WGAD should establish protocol to address instances in which countries are repeatedly uncooperative in providing information, in implementing recommendations, and in allowing country visits.
- To further incentivize cooperation, the WGAD should work with NGOs to track the status and outcomes of cases.
- The WGAD should continue to invest in its publicly accessible database, clean the data to make them easier to sort and filter—allowing for more comprehensive data analysis—and track additional categories such as whether individuals have been released or outcome of cases.

Working Group on Enforced or Involuntary Disappearances

Overview

The Working Group on Enforced or Involuntary Disappearances (WGEID) was established by the former UN Human Rights Commission in 1980 to deal with questions of enforced or involuntary disappearances.²⁸⁵ It has five members, all of whom are Independent Experts and appointed according to balanced geographical representation.²⁸⁶ The WGEID is competent to handle questions of enforced or involuntary disappearances with respect to all UN member states.²⁸⁷ According to the WGEID, while there is a definition of the crime of enforced disappearance in the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, states are not obligated to adopt it

283 “Hekmati v Islamic Republic of Iran,” 278 F. Supp. 3d 145, 155; “The Free Nazanin Campaign and REDRESS Call for Magnitsky Sanctions on Perpetrators of Iran’s Hostage-Taking,” REDRESS, September 19, 2021, <https://redress.org/news/the-free-nazanin-campaign-and-redress-call-for-magnitsky-sanctions-on-perpetrators-of-irans-hostage-taking/>; “Written Evidence Submitted by Tulip Siddiq MP (UK10032),” UK Parliament, May 2020, <https://committees.parliament.uk/writtenevidence/6195/pdf/>; “Written Evidence on Behalf of Anoosheh Ashoori and His Family to the Foreign Affairs Select Committee Inquiry into the Handling of State Level Hostage Situations (SLH0039),” UK Parliament, October 4, 2022, <https://committees.parliament.uk/committee/78/foreign-affairs-committee/>.

284 For example, hostage taking. “Unprecedented Second Complaint to the UN Seeks Urgent Intervention for Nazanin Zaghari-Ratcliffe.”

285 “Mandate of the Working Group on Enforced or Involuntary Disappearances,” United Nations Office of the High Commissioner for Human Rights, last visited June 26, 2023, <https://www.ohchr.org/en/special-procedures/wg-disappearances/mandate-working-group-enforced-or-involuntary-disappearances#:~:text=In%20resolution%2020%20%28XXXVI%29%20of%2029%20February%201980%2C,relevant%20to%20enforced%20or%20involuntary%20disappearances%20of%20persons%22>.

286 “Working Group on Enforced or Involuntary Disappearances.”

287 “About Enforced Disappearance: Working Group on Enforced or Involuntary Disappearances,” United Nations Office of the High Commissioner for Human Rights, last visited June 26, 2023, [https://www.ohchr.org/en/special-procedures/wg-disappearances/about-enforced-disappearance#:~:text=International%20Convention%20for%20the%20Protection%20of%20all%20Persons,penalties%20which%20take%20into%20account%20its%20extreme%20seriousness;\"Working Group on Enforced or Involuntary Disappearances \(WGEID\) 'in a Nutshell' & Committee on Enforced Disappearances \(CED\) 'in a Nutshell,'\" UN Human Rights Special Procedures & UN Human Rights Treaty Bodies, 2022, 4, https://www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf](https://www.ohchr.org/en/special-procedures/wg-disappearances/about-enforced-disappearance#:~:text=International%20Convention%20for%20the%20Protection%20of%20all%20Persons,penalties%20which%20take%20into%20account%20its%20extreme%20seriousness;\).



During a demonstration in Paris, protestors rally for the release of political prisoners in Iran. Anna Margueritat / Hans Lucas via Reuters Connect

exactly as laid out in the declaration.²⁸⁸ Instead, the WGEID clarified that, at a minimum, any definition of the crime of enforced disappearance should contain the following cumulative elements: “(a) Deprivation of liberty against the will of the person concerned; (b) Involvement of government officials, at least indirectly by acquiescence; (c) Refusal to disclose the fate and whereabouts of the person concerned.”²⁸⁹ This definition contains the same minimum

elements found in the definition of the offense in the International Convention for the Protection of all Persons from Enforced Disappearances (ICPED).²⁹⁰

The WGEID is separate from the Committee on Enforced Disappearances (CED), which was established when the ICPED entered into force in 2010.²⁹¹ However, the two bodies collaborate, and both assist states in investigating

288 United Nations Human Rights Council, “Report of the Working Group on Enforced or Involuntary Disappearances: Addendum, Best Practices on Enforced Disappearances in Domestic Criminal Legislation,” paragraph 21, A/HRC/16/48/Add.3, December 28, 2010, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/a-hrc-16-48-add3.pdf>. See: “Declaration on the Protection of all Persons from Enforced Disappearance,” United Nations Office of the High Commissioner for Human Rights, December 18, 1992, Preamble, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance> (“Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”).

289 “Report of the Working Group on Enforced or Involuntary Disappearances: Addendum, Best Practices on Enforced Disappearances in Domestic Criminal Legislation.”

290 International Convention for the Protection of All Persons from Enforced Disappearance, Article 2, December 20, 2006, 2716 UNTS 3 (“For the purposes of this Convention, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”).

291 “About Enforced Disappearance: Working Group on Enforced or Involuntary Disappearances.”

disappearances, supporting victims and their families, and dealing with questions of remedies and reparations.²⁹² Despite the overlap in thematic activities, the CED is limited to cases of enforced disappearances that took place after the convention entered into force in 2010, and to cases relating to states that have ratified the convention.²⁹³ Only the WGEID is competent to handle cases outside those parameters.²⁹⁴

One of the central tasks of the WGEID is to help families determine the whereabouts or fate of their disappeared family members and, thus, act as a bridge for communication between the families of victims of enforced or involuntary disappearance, or organizations reporting such disappearances, and the governments concerned.²⁹⁵ Its mandate has been renewed several times, with the last resolution renewing its mandate adopted by the HRC in October 2020.²⁹⁶ The WGEID performs various tasks to achieve its mandate. It receives and examines reports of disappearances submitted by family members of the disappeared persons or human rights organizations; it transmits those reports to the states concerned; it submits requests to the states concerned to carry out investigations; and it requests that the concerned states inform the group as to the investigations and follows up with the states on a periodic basis.²⁹⁷

Beyond these tasks, the WGEID's mandate also includes monitoring the implementation of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance.²⁹⁸ The WGEID can help states comply with this declaration by, among other things, providing advisory services upon request and carrying out country visits.²⁹⁹ It is important to note that country visits can only

be undertaken at the invitation of a government, not on the WGEID's own initiative, although the group can ask a state for an invitation.³⁰⁰

Iran and the WGEID

The WGEID is the only UN body competent to deal with cases of enforced or involuntary disappearances in Iran, as the country has never ratified the ICPEP.³⁰¹ In its latest report to the HRC, the WGEID notes that, of the nineteen urgent appeals it submitted in its working year, one concerned the IRI.³⁰² In the same period, the WGEID also submitted fifty-one joint allegation letters with other Special Procedure mandate holders, one of which concerned the IRI.³⁰³ Overall, the WGEID noted that there were 548 outstanding cases concerning the IRI at the beginning of its reporting period.³⁰⁴ Between 1980 and 2022, the WGEID has transmitted a total of 585 cases to the IRI, only twenty-one of which have been clarified by the government.³⁰⁵

In this report, the WGEID once again expressed its concern about the enforced disappearances that took place in Iran in 1988, specifically over “ongoing concealment” of burial sites of victims who were executed and forcibly disappeared in that period.³⁰⁶ Additionally, it also expressed concern over reports relating to enforced disappearances of members of the Arab ethnic minority, recalling that enforced disappearances should never be used as a tool to quash dissent.³⁰⁷ It ended its observations on the IRI in this latest report by expressing its “hopes that the invitation it extended to the Government of the Islamic Republic of Iran in 2002 may soon materialize, ideally in the course of 2023, also in light of the standing invitation extended by the Government to all thematic special procedures.”³⁰⁸

292 Ibid.

293 Ibid.

294 Ibid.

295 “Working Group on Enforced or Involuntary Disappearances.”

296 United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council on 6 October 2020, Enforced or Involuntary Disappearances,” A/HRC/RES/45/3, October 8, 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/256/54/PDF/G2025654.pdf?OpenElement>; “Working Group on Enforced or Involuntary Disappearances”; “Mandate of the Working Group on Enforced or Involuntary Disappearances.”

297 “Working Group on Enforced or Involuntary Disappearances.” See also: “Mandate of the Working Group on Enforced or Involuntary Disappearances.”

298 “Mandate of the Working Group on Enforced or Involuntary Disappearances.”

299 “Working Group on Enforced or Involuntary Disappearances.”

300 “Country Visits: Working Group on Enforced or Involuntary Disappearances,” United Nations Office of the High Commissioner for Human Rights, last visited June 26, 2023, <https://www.ohchr.org/en/special-procedures/wg-disappearances/country-visits>.

301 See: “About Enforced Disappearance: Working Group on Enforced or Involuntary Disappearances”; “UN Treaty Body Database: View the Ratification Status by Country or by Treaty,” United Nations Office of the High Commissioner for Human Rights, last visited June 26, 2023, https://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx.

302 United Nations Human Rights Council, “Enforced or Involuntary Disappearance: Report of the Working Group on Enforced or Involuntary Disappearances,” paragraph 22, A/HRC/51/31, August 12, 2022, <https://undocs.org/A/HRC/51/31>.

303 Ibid., paragraph 23.

304 Ibid., 9.

305 Ibid., Annex II, 26.

306 Ibid., paragraph 59.

307 Ibid., paragraph 60.

308 Ibid., paragraph 61.



A sign calls for the release of Iranian political prisoners during a march following the death of Mahsa Jina Amini. Allison Bailey via Reuters Connect

While the WGEID has sent numerous country visit requests and reminders, none appear to have been accepted by the IRI.³⁰⁹

The WGEID's last report was issued before the current wave of protests sparked by Amini's death. There have been numerous reports of the IRI carrying out enforced disappearances in this period to quell the protests.³¹⁰ Cases of enforced disappearances in these protests, or any older cases, can be reported to the WGEID by relatives of the disappeared person or by an organization acting on behalf of the family with its consent.³¹¹ It is important that the person or organization who submits the report is able

to maintain communication with the WGEID throughout the process.³¹² It is also important to note that the form to submit a communication to the WGEID is only available in English, French, or Spanish.³¹³

There are several procedures available under the WGEID for examining cases of enforced disappearances. The urgent procedure is available for cases of enforced disappearances that began within three months of the case being reported to the WGEID. It may also be available, by authorization of the chair-rapporteur, if the case relates to an enforced disappearance that began more than three months but no more than one year before it is reported

309 See: "WGEID Country Visits and Invitations Database," United Nations Office of the High Commissioner for Human Rights, last visited June 28, 2023, <https://spinternet.ohchr.org/Search.aspx?Lang=en&MandateRefID=46>. The authors visited the database and filtered by country category to see only visits related to the IRI.

310 See, e.g.: "Iran: Crackdown on Peaceful Protests Since Death of Jina Mahsa Amini Needs Independent International Investigation, Say UN Experts," United Nations, press release, October 26, 2022, <https://www.ohchr.org/en/press-releases/2022/10/iran-crackdown-peaceful-protests-death-jina-mahsa-amini-needs-independent>; Wintour, "Iran Rights Violations Amount to Crime against Humanity, Says UN Expert."

311 "Reporting a disappearance to the Working Group," United Nations Office of the High Commissioner for Human Rights, last visited June 28, 2023, <https://www.ohchr.org/en/special-procedures/wg-disappearances/reporting-disappearance-working-group>.

312 Ibid.

313 Ibid.

to the WGEID—if it is connected to a case that falls within the three-month period. Under the urgent procedure, the WGEID transmits the case to the state concerned, using the most direct and fastest channels available to it.³¹⁴ The WGEID transmits urgent appeals to the minister of foreign affairs of the concerned state, again using the most direct and fastest means available, when it receives credible allegations regarding a person who has been arrested or otherwise deprived of their liberty and has been, or is at risk of being, forcibly disappeared. When an urgent appeal is transmitted, the WGEID requests that the government of the concerned state carry out an investigation to clarify the fate or whereabouts of the possible victim, and to inform the WGEID of the results of its investigation.³¹⁵

Standard procedures, in contrast to urgent procedures, are for cases of enforced disappearances reported to the WGEID three months or more after they began. These cases require the authorization of the WGEID before being transmitted to the concerned state. The case is transmitted along with a request to carry out an investigation to determine the fate or whereabouts of the disappeared person or persons, and for the concerned state to inform the WGEID of the results of its investigation. Any subsequent information received by the WGEID also requires approval from the Working Group before being sent to the concerned state.³¹⁶

The WGEID also submits general allegations and prompt interventions. Prompt interventions relate to cases of intimidation, persecution, reprisal, or other harassment of the relatives of the disappeared person, witnesses in the case, human rights organizations involved in the case, human rights defenders, or any other individual concerned with the disappearances. Such reports are also transmitted to the minister of foreign affairs of the concerned state through the most direct and quickest means, together with an appeal from the WGEID that all necessary steps be taken to protect the fundamental rights of these individuals.³¹⁷ General allegations, on the other hand, are a summary of all allegations received by the WGEID from relatives of disappeared persons or organizations assisting relatives, and relating to obstacles they have identified in the country's implementation of the 1992 declaration. These states are invited by the WGEID to submit a comment in response to general allegations.³¹⁸

Recommendations

- Civil-society organizations should assist families of victims of enforced disappearances within the last three months to submit reports to the WGEID under the urgent procedure option and to maintain communication throughout the process.
- For enforced disappearances reported three months or more after they began, relatives of the disappeared persons, and organizations assisting them, should make use of the standard procedure.
- The WGEID should submit urgent appeals relating to all credible reports of enforced disappearances in Iran.
- The WGEID should join other mechanisms, such as the Special Rapporteur on Iran, to issue a joint communication regarding both the most recent and historical enforced disappearances in Iran.
- The WGEID should make the form to submit a report concerning an enforced disappearance available in more languages. The form only being available in English, French, or Spanish greatly limits the number of families that could make a report on their own, and forces families to seek assistance from an organization.

Investigative Bodies, Mechanisms, and the Iran Fact-Finding Mission

Commissions of Inquiry and Fact-Finding Missions

The United Nations has multiple types of bodies with a mandate to investigate violations of international human rights law and international humanitarian law. The most commonly established bodies are the Commissions of Inquiry (COIs) and Fact-Finding Missions (FFMs), which conduct broad investigations of violations and issue public reports. A more recent development has been the establishment of investigative mechanisms, which conduct investigations and build case files to support criminal accountability. This section first provides an overview of

314 "Procedures: Working Group on Enforced or Involuntary Disappearances," United Nations Office of the High Commissioner for Human Rights, last visited June 29, 2023, <https://www.ohchr.org/en/special-procedures/wg-disappearances/procedures>.

315 *Ibid.*

316 *Ibid.*

317 *Ibid.*

318 *Ibid.*

these two main categories of UN investigative bodies, comparing their mandates, functions, strengths, and limitations, before it discusses UN investigative bodies relevant to Iran.

Mandate

COIs and FFMs are primarily established by HRC resolutions.³¹⁹ They are temporary bodies established in response to unfolding violations of international human rights or humanitarian law. The core of COI and FFM mandates is to investigate and establish facts in relation to alleged violations, assess and analyze the facts under applicable law, determine the existence of violations, and offer recommendations. In the past two decades, COI and FFM mandates have increasingly included accountability-focused language, such as requests to identify perpetrators or issue recommendations on accountability measures.³²⁰ Recent mandates have also included more case-building tasks, such as collecting, consolidating, analyzing, and preserving evidence and supporting judicial and other accountability efforts.³²¹ The scope of mandates will vary depending on the situation under investigation, and can range from a specific incident limited in geographic and temporal scope, to an entire country mandate over a wider range of time.³²² Mandates are typically established for 1–2 years but can be renewed, which often happens if violations are ongoing.³²³

Makeup

COIs and FFMs are typically led by three members, appointed by the mandating body (typically the HRC) with input from states, NGOs, and the OHCHR. Members are selected based on their qualifications—including knowledge of country situations, language skills, and subject-matter expertise—as well as their independence, gender balance,

and geographic diversity, among other factors. Once selected, the members lead the investigation, with support from staff, contractors, and consultants. Staff typically comprises investigators, analysts, lawyers, interpreters/translators, and security officers, in addition to more specialized hires based on mandate-specific needs, such as forensic or weapons experts, open-source investigators, and archivists or data officers. Most COIs and FFMs are also backed by OHCHR, which has supported dozens of investigative mandates and can offer guidance on methodology and standards, as well as some administrative and logistical support.³²⁴

Functioning and Tasks

The core of COI and FFM work is in fact finding or evidence gathering and analysis, all of which occur largely behind the scenes. Fact-finding and evidence-gathering methods differ depending on the context, including security and access issues, but may include open-source investigations, interviews with victims and perpetrators, site visits, and review of documentary materials. Information gathered is then evaluated for relevancy, reliability, and validity, after which factual and legal analysis is conducted to determine what events occurred, whether they constitute violations, and who is responsible. The most common standard of proof for findings and conclusions is “reasonable suspicion” or “reasonable grounds to believe,” below the “beyond reasonable doubt” standard required under criminal law. Recommendations are then formulated based on the findings and, depending on the mandate, may include ending violations, investigation and prosecution by national or international bodies, referral of a situation to the ICC, issuance of sanctions, establishment of a reparation mechanism, legal reform, and/or continued or enhanced monitoring and reporting by UN bodies, among other outcomes.³²⁵

319 The HRC has also established other similar investigative bodies under different names—for example, groups or teams of experts, Commissions on Human Rights, and accountability projects. Other UN bodies have also established COIs, FFMs, and other investigative bodies. See: “International Commissions of Inquiry, Fact-Finding Missions: Mandating Authority,” United Nations Research Guides, last visited August 12, 2023, <https://libraryresources.unog.ch/c.php?g=462695&p=3162812>.

320 “Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice,” United Nations Office of the High Commissioner for Human Rights, 2015, 7, 11–14, https://www.ohchr.org/sites/default/files/Documents/Publications/Col_Guidance_and_Practice.pdf.

321 See, e.g.: United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council on 23 March 2021: Promoting Reconciliation, Accountability and Human Rights in Sri Lanka,” paragraph 6, A/HRC/RES/46/1, March 26, 2021, <https://undocs.org/A/HRC/RES/46/1>; United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council on 24 March 2021: Situation of Human Rights in Belarus in the Run-Up to the 2020 Presidential Election and Its Aftermath,” paragraph 13(a), (c), A/HRC/RES/46/20, March 29, 2021, <https://undocs.org/A/HRC/RES/46/20>; United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council on 4 March 2022: Situation of Human Rights in Ukraine Stemming from the Russian Aggression,” paragraph 11(b), A/HRC/RES/49/1, March 7, 2022, <https://undocs.org/A/HRC/RES/49/1>. See also Federica D’Alessandra, et al., “Anchoring Accountability for Mass Atrocities,” Oxford Institute for Ethics, Law, and Armed Conflict, May 2022, 14–15, <https://www.elac.ox.ac.uk/wp-content/uploads/2023/04/Oxford-ELAC-Anchoring-Accountability-for-Mass-Atrocities.pdf>.

322 “Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law,” 7.

323 For example, the mandate for the COI on Syria was initially established in August 2011, and has been renewed repeatedly since then, most recently through March 2023. “Independent International Commission of Inquiry on the Syrian Arab Republic: Mandate,” United Nations Human Rights Council, last visited August 12, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/co-i-mandate>.

324 “Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law,” 3, 18–20, 22–27; D’Alessandra, et al., “Anchoring Accountability for Mass Atrocities,” 14–15, 39–40, 44.

325 “Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law,” 42–60, 62, 94–99.

Once completed, analysis, findings, and recommendations are compiled in reports that are issued publicly and presented before the Human Rights Council. These public reports are intended to contribute to the historic record, strengthen calls for accountability, and promote the implementation of recommendations. However, non-public information from COIs and FFMs can also help contribute to accountability efforts. Bodies mandated to identify perpetrators most often do not release names publicly, but instead compile confidential lists, which may be shared with accountability actors.³²⁶ In addition, where informed consent is obtained, COIs and FFMs can provide interview records, contact information for witnesses, and documentary materials to investigating and prosecuting authorities for use as leads or evidence in cases.³²⁷

Strengths

One of the main strengths of a COI or FFM is in its tried-and-true model. With dozens of these investigative bodies established in the past decades, and with OHCHR providing institutional support to mandates, there is no need to reinvent the wheel with each new mandate. Instead, best practices can be compiled from past experience and applied to future mandates.³²⁸ The resourcing required for COIs and FFMs is also considerably less than that of independent investigative mechanisms (discussed below), as COI and FFM staffing is smaller and they can receive support from OHCHR.³²⁹ The model of receiving support from OHCHR can also speed up the timeline for establishing the body, conducting investigations, and issuing reports, which is another strength of COIs and FFMs.

Limitations

However, COIs and FFMs face notable limitations. These bodies are only established and renewed on a temporary

basis, which makes it impossible to build out any longer-term work, and can cause a relatively high turnover of staffing. This also poses a challenge in maintaining contact with sources, which is necessary for referral of witnesses to jurisdictions. The various bodies established to investigate human rights violations in Libya clearly demonstrate this issue. An International Commission of Inquiry on Libya was established in February 2011 and shut down only a year later, in March 2012.³³⁰ Three years later, an OHCHR Investigation on Libya was established in March 2015, but ended, again, only one year later in March 2016.³³¹ Only in June 2020, after various calls for the establishment of another commission of inquiry or investigative mechanism, was the Independent Fact-Finding Mission on Libya created.³³² It issued its final report in March 2023.³³³

Once mandates close, additional challenges arise in providing information or evidence to jurisdictions. The short-term nature of COIs and FFMs also limits the potential depth of their investigations and reports. Accordingly, the result of their investigations is often relatively broad but not particularly deep, with findings established to a standard below that required for criminal prosecutions. COIs and FFMs may also suffer limitations based on a limited mandate (only focusing on a specific time period or type of violation), relatively limited staffing and funding (which may lead to a lack of necessary expertise), and/or inability to access the geographic region of concern.³³⁴

Lastly, recommendations issued by COIs and FFMs depend on UN support for any kind of implementation. The Independent Fact-Finding Mission on Libya's findings in its final report indicated that international crimes were being committed.³³⁵ It urged the HRC to establish an independent international investigative mechanism, and called on the international community to provide the resources necessary for such an undertaking.³³⁶ Despite the work of that

³²⁶ *Ibid.*, 13–14, 89–93.

³²⁷ See: D'Alessandra, et al., "Anchoring Accountability for Mass Atrocities," 16; "UN Commissions of Inquiry and Fact-Finding Missions," House of Lords Library, June 14, 2022, <https://lordslibrary.parliament.uk/un-commissions-of-inquiry-and-fact-finding-missions/#heading-3>.

³²⁸ D'Alessandra, et al., "Anchoring Accountability for Mass Atrocities," 39–40, 44.

³²⁹ See: "Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law," 11; D'Alessandra, et al., "Anchoring Accountability for Mass Atrocities," 14–15, 39–40.

³³⁰ See: "Human Rights Council-Mandated Investigative Bodies," United Nations Office of the High Commissioner for Human Rights, last visited August 12, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/list-hrc-mandat>; "Libya: Q&A on an International Commission of Inquiry," Human Rights Watch, February 12, 2020, <https://www.hrw.org/news/2020/02/12/libya-qa-international-commission-inquiry#Q3>.

³³¹ "OHCHR Investigation on Libya," United Nations Office of the High Commissioner for Human Rights, last visited August 12, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/oiol>.

³³² See: "Independent Fact-Finding Mission on Libya," United Nations Office of the High Commissioner for Human Rights, last visited August 12, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/libya/index>; "Libya: Q&A on an International Commission of Inquiry"; "Joint Letter on Establishing a Commission of Inquiry for Libya," Human Rights Watch, December 4, 2019, <https://www.hrw.org/news/2019/12/04/joint-letter-establishing-commission-inquiry-libya>.

³³³ "Libya: Urgent Action Needed to Remedy Deteriorating Human Rights Situation, UN Fact-Finding Mission Warns in Final Report," United Nations Office of the High Commissioner for Human Rights, March 27, 2023, <https://www.ohchr.org/en/press-releases/2023/03/libya-urgent-action-needed-remedy-deteriorating-human-rights-situation-un>.

³³⁴ D'Alessandra, et al., "Anchoring Accountability for Mass Atrocities," 33, 35, 42–43, 55–56, 86–87.

³³⁵ United Nations Human Rights Council, "Report of the Independent Fact-Finding Mission on Libya," paragraphs 2, 4, A/HRC/52/83, March 3, 2023, <https://undocs.org/A/HRC/52/83>.

³³⁶ *Ibid.*, paragraph 103.

FFM, and its findings and recommendations, the HRC only adopted a resolution on technical assistance and capacity building in Libya.³³⁷ The HRC, in essence, ignored the accountability recommendations put forth by the FFM for Libya and only focused on supporting the Libyan government through UN-backed technical assistance and capacity building.³³⁸

Investigative Mechanisms

Mandate

Since 2016, UN bodies have established three investigative mechanisms, which have more of an accountability focus and are more permanent in nature than COIs and FFMs. The first is the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (the “IIIM”), established by the UN General Assembly (UNGA) in December 2016.³³⁹ In the face of mounting violations in Syria and paralysis at the UN Security Council—the only body with the authority to refer Syria to the International Criminal Court or establish an ad hoc tribunal for Syria—the General Assembly established the IIIM, a body with a “quasi-prosecutorial function” mandated to “collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings...in national, regional or international courts or tribunals.”³⁴⁰ The IIIM’s mandate covers core international crimes (war crimes, crimes against humanity, and genocide) committed in Syria from March 2011 onward, by any actor.³⁴¹

The second investigative mechanism is the Investigative Team to Promote Accountability for Crimes Committed

by Da’esh/ISIL (UNITAD), established in September 2017 by the UN Security Council, after the government of Iraq requested international assistance in ensuring accountability for ISIL crimes.³⁴² UNITAD’s mandate is “to support domestic efforts to hold ISIL (Da’esh) accountable by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group ISIL (Da’esh) in Iraq.”³⁴³ The third investigative mechanism is the Independent Investigative Mechanism for Myanmar (IIMM), established in September 2018 by the UN Human Rights Council, with a mandate, nearly identical to the IIIM’s, to “collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings...in national, regional or international courts or tribunals.”³⁴⁴ The IIMM became operational in August 2019, after the previously established Independent International Fact-Finding Mission on Myanmar handed over the information and evidence it had collected throughout its mandate.³⁴⁵

Makeup

The investigative mechanisms are all led by a head appointed by the UN secretary general—in consultation with the UN High Commissioner for Human Rights and the Legal Counsel for the IIIM and IIMM, and in consultation with the government of Iraq for UNITAD—and selected based on their extensive experience in criminal justice and international law, as well as their independence, impartiality, and commitment to justice, accountability, and human rights. The heads are mandated to recruit staff with appropriate language and regional expertise and experience in international criminal, human rights, and humanitarian law, criminal investigation and prosecution, evidence storage and preservation, military and forensic matters, witness

337 See: “UN Rights Body Fails to Further Justice in Libya,” International Federation for Human Rights, April 13, 2023, <https://www.fidh.org/en/region/north-africa-middle-east/libya/un-rights-body-fails-to-further-justice-in-libya>; Philippe Dam, “Weak UN Resolution on Libya Exposes EU Bias,” Human Rights Watch, April 7, 2023, <https://www.hrw.org/news/2023/04/07/weak-un-resolution-libya-exposes-eu-bias>.

338 “UN Rights Body Fails to Further Justice in Libya”; Dam, “Weak UN Resolution on Libya Exposes EU Bias.”

339 United Nations General Assembly, “Resolution Adopted by the General Assembly on 21 December 2016: International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011,” paragraph 4, A/RES/71/248, January 11, 2017, <https://undocs.org/A/RES/71/248>.

340 Ibid. See also: Beth Van Schaack, *Imagining Justice for Syria* (Oxford: Oxford University Press: 2020), 366–367.

341 “At a Glance,” International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, last visited August 12, 2023, <https://iiim.un.org/who-we-are/at-a-glance/>.

342 United Nations Security Council, “Resolution 2379 (2017),” paragraph 2, S/RES/2379 (2017), September 21, 2017, [https://undocs.org/S/RES/2379\(2017\)](https://undocs.org/S/RES/2379(2017)).

343 Ibid. See also: “Our Mandate,” Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), last visited August 12, 2023, <https://www.unitad.un.org/content/our-mandate>.

344 United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council on 27 September 2018: Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar,” paragraph 22, A/HRC/RES/39/2, October 3, 2018, <https://undocs.org/a/hrc/res/39/2>. See also: “Mandate and Establishment,” Independent Investigative Mechanism for Myanmar, last visited August 12, 2023, <https://iimm.un.org/mandate-and-establishment/>.

345 “Independent International Fact-Finding Mission on Myanmar,” United Nations Office of the High Commissioner for Human Rights, last visited August 12, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/index>; HRC Resolution 39/2 (2018).

and victim protection, sexual and gender-based crimes, and children’s rights.³⁴⁶

Unlike COIs and FFMs, investigative mechanisms sit independently of any other UN body and, therefore, do not receive staffing, logistical, infrastructural, or other support from OHCHR. In part because each mechanism requires substantial costs for infrastructure, technology, development of protocols and procedures, and other institutional work, and in recognition of the mechanisms’ more permanent status, broader scope of their work, and more robust and complex mandates, investigative mechanisms have been awarded far greater budgets and resources than have COIs and FFMs.³⁴⁷

Functioning and Tasks

The core work of investigative mechanisms is: collection of evidence and investigations; preservation of evidence; analysis and preparation of case files; and support to jurisdictions. First, the mechanisms collect information and evidence from a variety of sources, including states, international organizations, UN bodies (including COIs

and FFMs), civil-society organizations, media, and open sources, among others. The mechanisms can also conduct targeted investigations to collect additional evidence in support of their own investigative priorities, or the priorities of jurisdictions.³⁴⁸ Second, the mechanisms preserve all evidence in a central repository to ensure safeguarding and access in the future.³⁴⁹ Third, the mechanisms analyze evidence, both to build their own case files and to support jurisdictions’ efforts.³⁵⁰ Fourth, the mechanisms share information, evidence, and analysis with competent, rights-respecting jurisdictions, either at the request of the jurisdictions or proactively by the mechanism.³⁵¹ Because of the mechanisms’ focus on criminal-justice efforts, all of these steps are taken in line with criminal legal standards—for example, by maintaining chain of custody, considering theories of liability and collecting linkage evidence, establishing elements of crimes under international criminal law, and considering the high burden of proof for criminal cases.³⁵²

All areas of the mechanisms’ work benefit from their outreach and engagement with civil society, states, international organizations, and other relevant actors.³⁵³ Because

346 United Nations General Assembly, “Implementation of the Resolution Establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011: Report of the Secretary-General,” Annex, Terms of Reference, paragraphs 31–33, A/71/55, January 19, 2017 <https://undocs.org/a/71/755>; United Nations Security Council, “Letter dated 9 February 2018 from the Secretary-General addressed to the President of the Security Council,” Annex, Terms of Reference (UNITAD), paragraphs 11, 14–17, S/2018/118, February 14, 2018, <https://undocs.org/s/2018/118>; United Nations General Assembly, “Letter dated 16 January 2019 from the Secretary-General addressed to the President of the General Assembly,” Annex, Independent Investigative Mechanism for Myanmar Terms of Reference, paragraphs 22, 24–26, A/73/716, January 21, 2019, <https://undocs.org/a/73/716>.

347 See: D’Alessandra, et al., “Anchoring Accountability for Mass Atrocities,” 6, 16–17, 35–36, 39–40.

348 “Collection, Investigation & Analysis,” International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, last visited August 12, 2023, <https://iiim.un.org/what-we-do/information-and-evidence-collection/>; “Collect, Store, and Preserve Evidence to the Highest Possible Standards,” Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), last visited August 12, 2023, <https://www.unitad.un.org/content/collect-store-and-preserve-evidence-highest-possible-standards/>; “Investigative Strategy,” Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), last visited August 12, 2023, <https://www.unitad.un.org/content/investigative-strategy-0/>; “Evidence Collection and Case Building,” Independent Investigative Mechanism for Myanmar, last visited August 12, 2023, <https://iiim.un.org/evidence-collection-and-case-building/>.

349 “Information & Evidence Management,” International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, last visited August 12, 2023, <https://iiim.un.org/what-we-do/digital-data-preservation-process/>; “Collect, Store, and Preserve Evidence to the Highest Possible Standards”; “Evidence Collection and Case Building.”

350 “Collection, Investigation & Analysis,” International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, last visited August 12, 2023, <https://iiim.un.org/what-we-do/information-and-evidence-collection/>; “Collect, Store, and Preserve Evidence to the Highest Possible Standards”; “Evidence Collection and Case Building.”

351 “Support to Jurisdictions,” International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, last visited August 12, 2023, <https://iiim.un.org/what-we-do/support-to-jurisdictions/>; United Nations Security Council, “Ninth Report of the Special Advisor and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL in Iraq and the Levant,” paragraphs 97–102, S/2022/836, November 8, 2022, <https://undocs.org/S/2022/836>; “Information Sharing,” Independent Investigative Mechanism for Myanmar, last visited August 12, 2023, <https://iiim.un.org/information-sharing/>.

352 “At a Glance,” IIIM; “Frequently Asked Questions,” Independent Investigative Mechanism for Myanmar, last visited August 12, 2023, <https://iiim.un.org/faq/>; “Collect, Store, and Preserve Evidence to the Highest Possible Standards.” See also: “Lessons Learned from the First Generation of UN Investigative Mechanisms for Future Criminal Accountability,” United States Holocaust Memorial Museum, September 13, 2019, paragraphs 6, 12, https://www.ushmm.org/m/pdfs/19.09.17_Considerations_for_CS_O_Engagement_with_UN_Investigative_Mechanisms.pdf.

353 See: “Outreach,” International, Impartial and Independent Mechanism, last visited August 12, 2023, <https://iiim.un.org/what-we-do/outreach/>; “Who We Work With,” International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, last visited August 12, 2023, <https://iiim.un.org/who-we-work-with/>; “Engaging Iraqi Communities,” Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), last visited August 12, 2023, <https://www.unitad.un.org/content/engaging-iraqi-communities/>; “Public Outreach,” Independent Investigative Mechanism for Myanmar, last visited August 12, 2023, <https://iiim.un.org/public-outreach/>; “External Cooperation,” Independent Investigative Mechanism for Myanmar, last visited August 12, 2023, <https://iiim.un.org/external-cooperation/>.

UNITAD was established at the request of the government of Iraq, the mechanism and government work together closely, with UNITAD offering technical assistance and capacity building.³⁵⁴ In contrast, the IIM and IIMM do not work with the governments of Syria or Myanmar, respectively, because those governments oppose the establishment of the mechanisms. Instead, these mechanisms engage significantly with Syrian and Myanmar civil society through dedicated initiatives for information sharing.³⁵⁵

Strengths

The main strength of an investigative mechanism is in its direct contributions to accountability efforts. While COI and FFM mandates have increasingly included accountability components, these bodies often are not well placed to contribute directly to accountability efforts due to their temporary nature, application of standards below those required for criminal cases, and more limited resources.³⁵⁶ In contrast, investigative mechanisms are designed around their contributions to criminal cases, ensuring that they collect and preserve evidence to a sufficiently high standard so that their work can be used in future trials. Take, for example, the mandate of the IIMM to “collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011” and to prepare files for criminal proceedings.³⁵⁷ The FFM established for Myanmar, on the other hand, had a more general mandate to “establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State ... with a view to ensuring full accountability for perpetrators and justice for victims.”³⁵⁸ Another strength of investigative mechanisms is in their relatively significant capacity and more permanent

nature, allowing them to build out more long-term work that can have both breadth and depth.³⁵⁹

Limitations

However, investigative mechanisms also face significant limitations in their work. Because the mechanisms are independent from OHCHR or any other UN body, they must each establish their own procedures, systems, and infrastructure and, thus, require significantly more startup costs and efforts than do COIs and FFMs. While COIs and FFMs can complete investigations and issue reports within 12–18 months, it took at least that amount of time before the investigative mechanisms were engaging in substantive work.³⁶⁰ In addition, the mechanisms have faced challenges from sources of funding being unpredictable or inconsistent.³⁶¹

Another limitation comes from the confidential nature of investigative mechanisms’ work. In comparison to COIs and FFMs, which release public reports detailing their investigation, analysis, and findings, investigative mechanisms’ substantive work is in preparing confidential case files. The only public reports released by these mechanisms provide few details about their work, which has left civil-society groups and other actors feeling out of the loop and uninformed about the mechanisms’ work.³⁶²

Finally, for bodies specifically established to advance accountability, investigative mechanisms are significantly limited given their inability to file charges, initiate prosecutions, or litigate cases. The mechanisms remain dependent on authorities within domestic, regional, or international courts to bring cases, while the mechanisms can only provide evidence and information to investigating and prosecuting authorities.³⁶³

354 “Supporting National Authorities,” Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), last visited August 12, 2023, <https://www.unitad.un.org/content/supporting-national-authorities>; “Capacity Building for Iraqi Judges,” Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), last visited August 12, 2023, <https://www.unitad.un.org/content/capacity-building-iraqi-judges>.

355 “Outreach”; “Public Outreach.”

356 See generally: Ted Piccone, “U.N. Human Rights Commissions of Inquiry: The Quest for Accountability, Foreign Policy at Brookings,” Brookings, 2017, https://www.brookings.edu/wp-content/uploads/2017/12/fp_20171208_un_human_rights_commissions_inquiry.pdf.

357 HRC Resolution 39/2 (2018), paragraph 22. See also: “Mandate and Establishment.”

358 United Nations Human Rights Council, “Resolution Adopted by the Human Rights Council on 24 March 2017: Situation of Human Rights in Myanmar,” paragraph 11, A/HRC/RES/34/22, April 3, 2017, <https://undocs.org/a/hrc/res/34/22>.

359 Again, compare the two-year mandate of the FFM established for Myanmar (2017–2019) to the ongoing nature of the IIMM. See: “Independent International Fact-Finding Mission on Myanmar”; HRC Resolution 39/2 (2018).

360 See: “Lessons Learned from the First Generation of UN Investigative Mechanisms for Future Criminal Accountability,” paragraphs 21–22, 27; United Nations General Assembly, “Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011,” paragraphs 7–14, A/73/295, August 3, 2018, <https://undocs.org/A/73/295>; United Nations Security Council, “Second Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant,” paragraphs 16–17, 38, 43, 52, S/2019/407, May 17, 2019, <https://undocs.org/S/2019/407>; United Nations Human Rights Council, “Report of the Independent Investigative Mechanism for Myanmar,” paragraphs 38–47, A/HRC/45/60, July 7, 2020, <https://undocs.org/A/HRC/45/60>.

361 D’Alessandra, et al., “Anchoring Accountability for Mass Atrocities,” 34–39, 41.

362 “Lessons Learned from the First Generation of UN Investigative Mechanisms for Future Criminal Accountability.”

363 Van Schaack, *Imagining Justice for Syria*, 374.

Calls for a Standing Investigative Mechanism

Since the three investigative mechanisms were established for Syria, Islamic State of Iraq and al-Sham (ISIS) crimes in Iraq, and Myanmar, there have been calls to establish similar mechanisms for other country contexts. Many advocates prefer investigative mechanisms to COIs or FFM because of the mechanisms' specific accountability focus. However, states are reluctant to establish additional mechanisms due to their significant resource requirements. In this context, there are growing calls to establish a standing investigative mechanism that could conduct and support investigations and case-building efforts in numerous countries, without a need to establish a new structure each time.³⁶⁴

While there remain open questions as to what exactly a standing mechanism would look like and how it would function, the general concept proposed by researchers at the University of Oxford and the International Commission of Jurists is to establish an Investigative Support Mechanism (ISM) or a Standing Independent Investigative Mechanism (SIIM) independent from OHCHR or any other UN body. When triggered by a competent UN body, the ISM/SIIM would serve as an investigative mechanism like the IIM, UNITAD, and IIMM, collecting and preserving evidence, conducting analysis, and compiling case files to support legal proceedings. The ISM/SIIM would also act as a service provider to other UN investigative and accountability-focused bodies, including COIs and FFMs.³⁶⁵

In lieu of a standing investigative mechanism that would conduct its own investigations, researchers have also proposed the establishment of an "independent investigation support service provider" independent of OHCHR, or an "Investigative Support Division" within OHCHR, which would not conduct its own investigations, but instead provide greater capacity and support to existing and future accountability mandates such as COIs, FFMs, and investigative mechanisms.³⁶⁶

If a standing investigative mechanism is established, it is possible that it could investigate and build case files on human rights violations in Iran. However, even if established in the near future (which remains to be seen), it would be years before a standing investigative mechanism is up and running. In addition, it would likely take a separate HRC or UNGA resolution to trigger an investigation into violations in Iran. Accordingly, the recently established FFM on Iran, the subject of the next section, remains the only UN accountability mechanism for violations in Iran at present—with an option to establish a country-specific investigative mechanism should the FFM on Iran include that in its final report recommendations, and should UN member states vote in support.

Iran Fact-Finding Mission

Mandate

In November 2022, at a special session focused on the deteriorating human rights situation in Iran in the wake of Amini's death at the hands of the IRI's morality police, the Human Rights Council established an Independent International Fact-Finding Mission on the Islamic Republic of Iran.³⁶⁷ This body, the first COI or FFM to be focused on Iran, has a mandate to: investigate alleged human rights violations related to the protests that began on September 16, 2022, especially with respect to women and children; establish the facts and circumstances surrounding the alleged violations; collect, consolidate, analyze, and preserve evidence of the violations, with a view toward cooperating with any legal proceedings; and engage with all relevant stakeholders including the government of the IRI, OHCHR, the Special Rapporteur on Iran, human rights organizations, and civil society.³⁶⁸ The FFMI presented an oral update on its progress at the fifty-third HRC session on July 5, 2023.³⁶⁹ It will present its final comprehensive report at the fifty-fifth HRC session in March 2024, after which the mandate will expire (unless it is renewed by the HRC).³⁷⁰

364 Kingsley Abbot and Saman Zia-Zarifi, "Is It Time to Create a Standing Independent Investigative Mechanism (SIIM)? Part I," *OpinioJuris*, April 10, 2019, <http://opiniojuris.org/2019/04/10/is-it-time-to-create-a-standing-independent-investigative-mechanism-siim/>.

365 D'Alessandra, et al., "Anchoring Accountability for Mass Atrocities," 96; "Options for the Establishment of a Standing Independent Investigative Mechanism (SIIM)," International Commission of Jurists, September 2022, 9–13, <https://icj2.wenginepowered.com/wp-content/uploads/2022/09/Options-for-the-establishment-of-a-Standing-Independent-Investigative-Mechanism-SIIM-26-September-2022-1.pdf>.

366 D'Alessandra, et al., "Anchoring Accountability for Mass Atrocities," 96; "Options for the Establishment of a Standing Independent Investigative Mechanism (SIIM)," 11.

367 "Human Rights Council Establishes Fact-finding Mission to Investigate Alleged Human Rights Violations in Iran Related to the Protests that Began on 16 September 2022," United Nations Office of the High Commissioner for Human Rights, November 24, 2022, <https://www.ohchr.org/en/news/2022/11/human-rights-council-establishes-fact-finding-mission-investigate-alleged-human-rights>.

368 United Nations Human Rights Council, "Resolution Adopted by the Human Rights Council on 24 November 2022: Deteriorating Situation of Human Rights in the Islamic Republic of Iran, Especially with Respect to Women and Children," paragraph 7, A/HRC/RES/S-35/1, November 24, 2022, <https://undocs.org/a/hrc/res/s-35/1>.

369 "Iran Must End Crackdown against Protestors and Uphold Rights of all Iranians, Especially Women and Girls, Fact-Finding Mission Says," United Nations Office of the High Commissioner for Human Rights, July 5, 2023, <https://www.ohchr.org/en/press-releases/2023/07/iran-must-end-crackdown-against-protesters-and-uphold-rights-all-iranians>.

370 HRC Resolution S-35/1 (2022), paragraph 8; "Independent International Fact-Finding Mission on the Islamic Republic of Iran," United Nations Human Rights Council, last visited June 1, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/ffm-iran/index>.



A woman cuts her hair during a demonstration in solidarity with Mahsa “Jina” Amini outside the Ministry of Foreign Affairs in Stockholm on September 24, 2022. Fredrik Persson via Reuters Connect

Makeup

In December 2022, the president of the HRC appointed the three members of the FFMI—Bangladeshi barrister Sara Hossain, Pakistani law professor Shaheen Sardar Ali, and Argentine lawyer Viviana Krsticevic—all of whom have extensive experience with international human rights bodies and have worked on women’s rights and gender justice in particular.³⁷¹ In January 2023, recruitment began for the rest of the FFMI’s staff, which is set to include investigators (including those with particular expertise in sexual and gender-based violence and open-source information), a senior analyst, a legal adviser, a child-protection officer, an information- and evidence-management officer, and interpreters/translators, among others.³⁷²

Functioning and Tasks

The core of the FFMI’s work will be investigating and collecting evidence of alleged human rights violations related to the protests that began in September 2022, conducting factual and legal analysis to determine the existence of violations, and compiling findings in a comprehensive report to be released in early 2024. Given the IRI’s opposition to the FFM, it is unlikely investigators will be granted access to the country.³⁷³ Thus, the FFMI’s main investigative methods will likely be interviews with victims and witnesses outside of Iran, possibly remote interviews with individuals inside Iran (if they can be conducted securely), collection and review of open-source materials, and review of relevant documentary materials.

371 “President of Human Rights Council Appoints Members of Investigative Body on Iran,” United Nations Office of the High Commissioner for Human Rights, press release, December 20, 2022, <https://www.ohchr.org/en/press-releases/2022/12/president-human-rights-council-appoints-members-investigative-body-iran>.

372 See: “Oral Statement of Programme Budget Implications Arising from Draft Resolution A/HRC/S-35/L.1, as Orally Revised, of the Human Rights Council,” United Nations Interoffice Memorandum, November 23, 2022, https://hrcmeetings.ohchr.org/HRCSessions/SpecialSessions/35/Documents/OralStatement_AHRC-S35L1_FFM%20Iran.pdf; “Fact-Finding Mission on Iran: Team Structure,” Impact Iran, February 28, 2023, <https://impactiran.org/2023/02/28/fact-finding-mission-on-iran-member-structure/>.

373 See, e.g.: Maziar Motamedi, “Iran Rejects UN Investigation into Protests,” Al Jazeera, November 28, 2022, <https://www.aljazeera.com/news/2022/11/28/iran-rejects-un-investigation-into-protests>.

Strengths

The FFMI should be well positioned to issue a strong and relatively detailed report that broadly covers human rights violations occurring in the context of the protests in Iran, from September 2022 through the end of 2023. Its mandate to establish facts and circumstances relating to alleged violations will likely yield information mapping out official structures, chains of command, and other essential information regarding roles and responsibilities. This kind of information is crucial for any future accountability efforts, especially with respect to identifying the people and entities responsible for human rights violations and possible related crimes. The FFMI can, thus, establish a foundation for future accountability efforts. It also may be able to contribute to accountability efforts through its mandated preservation of evidence with a view toward cooperating with legal proceedings.

In addition, the work of the FFMI will benefit greatly from the subject-matter expertise of the three appointed members. They will likely guide the work in a way that will adequately deal with the gender dimensions of the current context and events leading to Amini's death. Such expertise will also inform any direct contact between victims and witnesses, and the FFMI's members and staff.

Limitations

However, given that the FFMI has limited resources and time, and may not have access to evidence or witnesses inside Iran, it will not be able to collect and preserve all evidence that would be required for legal proceedings. With these current resource constraints, the FFMI will not be able to conduct a deep investigation into every violation in the covered period. Further, the FFMI does not have a mandate to build case files or initiate any legal proceedings. Nor does its mandate include identifying persons or entities responsible for human rights violations or related crimes.³⁷⁴ Its current mandate more closely resembles that of the FFM for Myanmar than that of the IIMM's accountability-focused work. As such, this framework and the limits to the mandate mean the Iran FFM is not primarily suited to pursuing criminal accountability.

In addition, the FFMI does not have a mandate to consider any violations that predated September 16, 2022, or any violations that have occurred outside the context of the protests. Thus, the FFMI does not have a mandate to investigate other significant human rights violations that

have occurred in Iran, such as the 1988 prison massacre, the 2009 Green Movement protests, the 2019–2020 Aban protests, and violations against minority groups. These limits on the FFMI's mandate fail to close the existing accountability gap for such human rights violations and crimes that have occurred outside the covered period and context. In addition, the FFMI is not well positioned to respond to new developments that are not strictly related to the context of the current protests.

Recommendations

The following recommendations, addressed to the FFMI team, as well as states and civil society, will help ensure that the FFMI has as significant as possible an impact on accountability, and supports victims' and affected communities' needs.

- The FFMI team should engage the Iranian public on the mandate and ensure it has access to the FFMI's public findings. This could be done by, among other things, hiring a public-information officer whose tasks include accurately explaining the mandate and operations of the FFMI, as well as publicizing any developments.
- Investigators and prosecutors building cases against Iranian perpetrators should seek out information and evidence collected by the FFMI. The FFMI should support accountability efforts to the furthest extent allowed under its mandate, including by providing information and evidence to competent, rights-respecting jurisdictions.
- HRC member states should extend the mandate of the FFMI beyond March 2024, to ensure that it has sufficient time to document the ongoing human rights violations that have occurred since September 2022. Further, HRC member states should consider expanding the mandate of the FFMI to violations that occurred prior to September 2022, to increase the prospect of accountability for other human rights violations in the IRI.
- UN member states should consider establishing a commission of inquiry like that established for the situation in Ukraine and/or an investigative mechanism like the IIMM once the FFMI's mandate is concluded. Any additional investigative body or mechanism established should have a particular view to end

³⁷⁴ Compare this to the mandate of the Independent International Commission of Inquiry on Ukraine, established in March 2022. See: HRC Resolution 49/1 (2022), paragraph 11(d) ("To identify, where possible, those individuals and entities responsible for violations or abuses of human rights or violations of international humanitarian law, or other related crimes, in Ukraine, with a view to ensuring that those responsible are held accountable"); *Ibid.*, paragraph 11(e) ("To make recommendations, in particular on accountability measures, all with a view to ending impunity and ensuring accountability, including, as appropriate, individual criminal responsibility, and access to justice for victims.").



Then-Human Rights Council President Ambassador Federico Villegas presides over the special session to establish the fact-finding mission on Iran in November 2022. IMAGO/photothek via Reuters Connect

impunity and ensure accountability, including individual criminal responsibility and access to justice for victims. Such a structure and mandate would allow for

the identification of mid- to lower-level perpetrators, in addition to those most responsible at the highest level.

Organisation for the Prohibition of Chemical Weapons

In what many fear are deliberate attacks against women and girls in the aftermath of the protests sparked by Amini's death and the Woman, Life, Freedom movement, thousands of schoolgirls all across Iran have been hospitalized from suspected poisonings since November 2022.³⁷⁵ These schoolgirls have been admitted to the hospital exhibiting symptoms like vomiting, nausea, dizziness, fatigue, numbness in limbs, shortness of breath, and other respiratory ailments after reportedly smelling something like a rotten tangerine or fish.³⁷⁶ The IRI's response was to first deny this was occurring and blame the hospitalizations on stress, while attempting to silence students and their families, and it detained at least one journalist who was writing about the poisonings.³⁷⁷ When the IRI acknowledged these attacks could be poisonings, it was quick to blame the "enemy."³⁷⁸ As the attacks continued, hundreds of concerned parents, families, teachers, and other members of the community protested in various cities across the country, and were met with security forces who used tear gas and tried to arrest them.³⁷⁹

While there have been some theories alleging that these hospitalizations are the result of mass hysteria, it is impossible to conclusively determine the cause of the illnesses while the IRI blocks any meaningful investigation.³⁸⁰ For example, there have been various reports that the Islamic Revolutionary Guard Corps have been obstructing any

investigations and threatening medical professionals and journalists.³⁸¹ Facing the impossibility of a genuine internal investigation and the likely involvement of the IRI in the attacks, many have called for international bodies like the UN HRC, the FFMI, the World Health Organization, or the OPCW to conduct an investigation to determine the origin of the illnesses and identify those responsible.³⁸² This section will provide an overview of the OPCW, an intergovernmental organization specialized in chemical weapons, the IRI's involvement with the OPCW, and how OPCW investigations are initiated and conducted, as well as how such an investigation may be initiated in this case.

Overview

The OPCW is the implementing body for the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention or CWC), and it was established in 1997 when the CWC entered into force.³⁸³ All 193 states that have ratified the CWC are OPCW member states, which, according to the OPCW, means that 98 percent of the global population is protected by the CWC.³⁸⁴ The purpose of the Chemical Weapons Convention is to eliminate chemical weapons, a category of weapons of mass destruction, through prohibiting their development, production,

- 375 Mahnaz Vahdati, "Schoolgirl Poisonings Are Persisting in Iran. So Should the International Reaction to Them," Atlantic Council *IranSource*, May 2, 2023, <https://www.atlanticcouncil.org/blogs/iransource/schoolgirl-poisonings-are-persisting-in-iran-so-should-the-international-reaction-to-them/>; "Iran: Millions of Schoolgirls at Risk of Poisoning," Amnesty International, April 19, 2023, <https://www.amnesty.org/en/documents/mde13/6696/2023/en/>; "Iran: Deliberate Poisoning of Schoolgirls Further Evidence of Continuous Violence against Women and Girls," United Nations, press release, March 16, 2023, <https://www.ohchr.org/en/press-releases/2023/03/iran-deliberate-poisoning-schoolgirls-further-evidence-continuous-violence>; Aina J. Khan, Caroline Radnofsky, and Bryan Gallion, "What's Behind the Crisis in Iran over the Suspected Poisoning of Schoolgirls?" NBC News, March 8, 2023, <https://www.nbcnews.com/news/world/iran-suspected-poisoning-schoolgirls-explained-rcna73499>; "Report on the Situation of Women in Iran for International Women's Day," Human Rights Activists News Agency, March 7, 2023, <https://www.en-hrana.org/report-on-the-situation-of-women-in-iran-for-international-womens-day/>.
- 376 Vahdati, "Schoolgirl Poisonings Are Persisting in Iran"; Sune Engel Rasmussen, "Iran Investigates Hundreds of Alleged Poison Attacks Against Schoolgirls," *Wall Street Journal*, March 2, 2023, <https://www.wsj.com/articles/iran-investigates-spate-of-alleged-poison-attacks-against-schoolgirls-d9fcbdf5>; Maryam Afshang, "Iran Investigates Poisoning of Hundreds of Schoolgirls with Toxic Gas," BBC, February 28, 2023, <https://www.bbc.com/news/world-middle-east-64797957>.
- 377 Vahdati, "Schoolgirl Poisonings Are Persisting in Iran"; "Iran: Deliberate Poisoning of Schoolgirls Further Evidence of Continuous Violence against Women and Girls"; Farnaz Fassihi, "Outraged Over Illnesses among Schoolgirls, Iranians Return to Streets," *New York Times*, March 7, 2023, <https://www.nytimes.com/2023/03/07/world/middleeast/iran-poison-schoolgirls-protests.html>.
- 378 Rasmussen, "Iran Investigates Hundreds of Alleged Poison Attacks Against Schoolgirls."
- 379 Fassihi, "Outraged Over Illnesses Among Schoolgirls, Iranians Return to Streets."
- 380 See, e.g.: "Are Iranian Schoolgirls Being Poisoned by Toxic Gas?" BBC, March 3, 2023, <https://www.bbc.com/news/world-middle-east-64829798>.
- 381 Vahdati, "Schoolgirl Poisonings Are Persisting in Iran."
- 382 Vahdati, "Schoolgirl Poisonings Are Persisting in Iran"; "EU Calls for UN to Probe Iran Schoolgirl Poisonings," Reuters, March 16, 2023, <https://www.reuters.com/world/middle-east/eu-calls-un-probe-iran-schoolgirl-poisonings-2023-03-16/>; Fassihi, "Outraged Over Illnesses Among Schoolgirls, Iranians Return to Streets"; Nahayat Tizhoosh, "Iranian Regime Blamed for Poisoning of Hundreds of Iranian Schoolgirls, as Gender-Based Attacks Continue," CBC News, March 1, 2023, <https://www.cbc.ca/news/world/iran-schoolgirl-poison-attacks-1.6764821>.
- 383 "OPCW at a Glance," Organisation for the Prohibition of Chemical Weapons, last visited June 16, 2023, <https://www.opcw.org/about-us/opcw-basics>.
- 384 Ibid.



An exterior view of the Organisation for the Prohibition of Chemical Weapons (OPCW) headquarters in The Hague. Michael Kooren via Reuters Connect

purchase, stockpiling, transfer, or use by states parties.³⁸⁵ The OPCW's mission, in turn, is to ensure compliance with the CWC to achieve a world that is completely, and permanently, free of chemical weapons.³⁸⁶ It is composed of three principal bodies: the Conference of the States Parties, the Executive Council, and the Technical Secretariat.³⁸⁷

The OPCW works to achieve its mission through, among other things, verification activities, destruction of existing

stockpiles of chemical weapons, routine and challenge inspections, supporting national implementation of the CWC, scientific research, and providing assistance to states parties.³⁸⁸ Should allegations of chemical-weapons use arise, the OPCW can respond in various ways, including by carrying out formal inspections designed to establish whether chemical weapons were actually used, and providing emergency assistance.³⁸⁹ In Syria, for example, the OPCW established the Fact Finding Mission in 2014 in response to

385 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Preamble, September 3, 1992, 1975 UNTS 45 (hereafter cited as Chemical Weapons Convention); "Chemical Weapons Convention," Organisation for the Prohibition of Chemical Weapons, last visited June 16, 2023, <https://www.opcw.org/chemical-weapons-convention>.

386 "Mission: A World Free of Chemical Weapons," Organisation for the Prohibition of Chemical Weapons, last visited June 16, 2023, <https://www.opcw.org/about/mission>.

387 "History: Looking Back Helps Us Look Forward," Organisation for the Prohibition of Chemical Weapons, last visited June 16, 2023, <https://www.opcw.org/about-us/history>.

388 "Eliminating Chemical Weapons: Committed to Complete and Verifiable Destruction," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/eliminating-chemical-weapons>; "Preventing the Re-Emergence of Chemical Weapons," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/preventing-re-emergence-chemical-weapons>; "Supporting National Implementation of the Convention: Delivering on the Convention's Promise," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/supporting-national-implementation-convention>; "Promoting Chemistry for Peace: Economic and Technical Development through Chemistry," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/promoting-chemistry-peace>; "Ensuring Preparedness," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/ensuring-preparedness>; "Responding to the Use of Chemical Weapons," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/responding-use-chemical-weapons>.

389 "Responding to the Use of Chemical Weapons," Organisation for the Prohibition of Chemical Weapons, accessed June 19, 2023, <https://www.opcw.org/our-work/responding-use-chemical-weapons>.

continuing allegations of chemical-weapons use; however, its mandate does not include identifying those responsible for using chemical weapons.³⁹⁰ Its continuation was endorsed in 2015 by the OPCW and the UN Security Council, and its work is ongoing.³⁹¹ Unlike the Fact Finding Mission, The OPCW-UN Joint Investigative Mechanism (JIM), established in 2015, had a mandate to identify those responsible for using chemical weapons.³⁹² Its mandate, however, was terminated in 2017 after Russia voted against renewing it in the UNSC.³⁹³ After the failure to renew the JIM's mandate, the OPCW Conference of the States Parties in 2018 established the OPCW Investigation and Identification Team (IIT) to identify perpetrators of specific instances of chemical-weapons use identified by the OPCW Fact Finding Mission or cases for which the JIM did not issue a report.³⁹⁴ Under the provisions of the CWC relating to noncompliance, the Conference of the States Parties adopted a decision that suspended certain rights and privileges for Syria until the director-general of the OPCW reports that Syria has met all the requirements set out in the suspension decision.³⁹⁵

Iran and the OPCW

The IRI has a long history of participation in, and cooperation with, the OPCW. In fact, the first-ever agreement with the OPCW for providing assistance on demand was with the IRI, for emergency medical assistance to treat victims of chemical weapons in Iranian hospitals.³⁹⁶ Such close

levels of cooperation and coordination continue through the present day. The director-general of the OPCW, for example, has met personally with the IRI's deputy foreign minister for legal and international affairs twice in the last two years, and issued a statement in 2022 to commemorate the thirty-fifth anniversary of the 1987 chemical-weapons attack in Sardasht.³⁹⁷ Despite the numerous indications that a chemical weapon was behind the illnesses of the thousands of hospitalized schoolgirls in Iran, there was no mention of the schoolgirl poisonings at all in the May 2023 press release detailing the discussion between the OPCW director-general and the IRI's deputy foreign minister for legal and international affairs.³⁹⁸

Throughout the years, the IRI has been outspoken on issues it considers of importance to the organization and general political concerns.³⁹⁹ Its record is mixed, however, and some actions cast doubt on its commitment to the elimination of the use of chemical weapons. For example, the IRI, along with Syria and Russia, was one of fifteen members to vote against the decision to suspend Syria's privileges at the OPCW.⁴⁰⁰ The IRI had also previously released a statement explaining that it voted against the OPCW's 2021 budget because its delegation felt that the IIT for Syria was an illegal extension of the Technical Secretariat's mandate and "a politically-motivated attempt of a few States Parties...to implement the so-called task of 'attribution' to identify the perpetrators of the use of chemical weapons that has not been mentioned either explicitly

390 Ibid.; "Fact-Finding Mission," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/fact-finding-mission>.

391 "Responding to the Use of Chemical Weapons"; "Fact-Finding Mission," OPCW.

392 "Syria and the OPCW," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/media-centre/featured-topics/opcw-and-syria#:~:text=The%20OPCW-UN%20Joint%20Investigative%20Mechanism%20%28JIM%29%20was%20established,findings.%20The%20JIM%E2%80%99s%20mandate%20expired%20in%20November%202017>.

393 "Security Council Fails to Renew Mandate of Joint Investigative Mechanism on Chemical Weapons Use in Syria, as Permanent Member Casts Veto," United Nations Meetings Coverage and Press Releases, October 24, 2017, <https://press.un.org/en/2017/sc13040.doc.htm>.

394 "Investigation and Identification Team (IIT)," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/iit>.

395 "Syria and the OPCW."

396 "Ensuring Preparedness," Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/our-work/ensuring-preparedness>.

397 "Statement by the Director-General of the OPCW, Fernando Arias, to Commemorate the 35th Anniversary of the 1987 Chemical Weapons Attack on Sardasht, Iran," Organisation for the Prohibition of Chemical Weapons, June 28, 2022, <https://www.opcw.org/media-centre/news/2022/06/statement-director-general-opcw-fernando-arias-commemorate-35th>; "OPCW Director-General Meets with Iran's Deputy Foreign Minister," Organisation for the Prohibition of Chemical Weapons, September 9, 2022, <https://www.opcw.org/media-centre/news/2022/09/opcw-director-general-meets-irans-deputy-foreign-minister>; "OPCW Director-General Meets Iran's Deputy Foreign Minister for Legal and International Affairs," Organisation for the Prohibition of Chemical Weapons, May 18, 2023, <https://www.opcw.org/media-centre/news/2023/05/opcw-director-general-meets-irans-deputy-foreign-minister-legal-and>.

398 See: "OPCW Director-General Meets Iran's Deputy Foreign Minister for Legal and International Affairs."

399 See, among other points, its criticism of the United States for failing to have completely destroyed its stockpile of chemical weapons, making the United States the last possessor state under the CWC. "Position Paper by the Delegation of the Islamic Republic of Iran to the OPCW at the Twenty-Fifth Session of the Conference of the States Parties on: United States Unilateral Actions and Unsubstantiated Allegations, Its Impact on the Rights of the States Parties and the OPCW's Credibility," Delegation of the IRI to the OPCW, last visited June 20, 2023, <https://www.opcw.org/sites/default/files/documents/2021/04/Statement%20of%20the%20Islamic%20Republic%20of%20Iran%20in%20response%20to%20the%20Statement%20of%20the%20United%20States%20at%2025th%20Session%20of%20the%20CSP.pdf>. The United States is set to destroy its remaining stockpile by the end of 2023. Younsa Fazili, Devon Bistakey, and Amanda Ducasse, "U.S. Meets Milestone in Chemical Weapons Stockpile Destruction," US Department of Defense, May 19, 2022, <https://www.defense.gov/News/News-Stories/Article/Article/3036463/us-meets-milestone-in-chemical-weapons-stockpile-destruction/source/us-meets-milestone-in-chemical-weapons-stockpile-destruction/>.

400 Anthony Deutsch, "Syria Loses Chemical Weapons Watchdog Voting Rights after Poison Gas Findings," Reuters, April 21, 2021, <https://www.reuters.com/world/syria-loses-chemical-weapons-watchdog-voting-rights-after-poison-gas-findings-2021-04-21/>.



A young Iranian woman lies in a hospital bed after a reported poisoning in an unspecified location in Iran. REUTERS TV via Reuters Connect

or implicitly in the Chemical Weapons Convention.”⁴⁰¹ For years, the US State Department has raised concerns that the IRI has not complied with the CWC because of its alleged failure to declare transfers of chemical weapons to Libya in the 1978–1987 war, its alleged failure to accurately declare its holdings of riot-control agents, and its failure to submit complete declarations.⁴⁰² The United States has also expressed concerns that the IRI is pursuing pharmaceutical-based agents and toxins that can be used in chemical weapons for offensive purposes.⁴⁰³

Nonetheless, the IRI currently sits on the Executive Council of the OPCW.⁴⁰⁴ The Executive Council has forty-one member states elected by the Conference of the States Parties for terms of two years.⁴⁰⁵ Its membership is decided

according to the principle of equitable geographic distribution, the importance of the chemical industry, and political and security concerns.⁴⁰⁶ The IRI belongs to the Asia and Pacific block.⁴⁰⁷ The Executive Council is the executive organ of the OPCW, supervises the Technical Secretariat, and is responsible for promoting the “effective implementation of, and compliance with” the CWC.⁴⁰⁸

Each member of the Executive Council gets one vote and, unless specified in the CWC, decisions are made by a two-thirds majority or, in the case of procedural matters, a simple majority.⁴⁰⁹ Given these voting arrangements, it is unlikely that the IRI could block actions related to compliance with the Chemical Weapons Convention at the Executive Council. If its role became a serious issue, its

401 “Explanation of Vote by the Delegation of the Islamic Republic of Iran on the Draft Decision on Programme and Budget of the OPCW for 2021 at the Twenty-Fifth Session of the Conference of States Parties,” Embassy of the Islamic Republic of Iran, The Hague, last visited June 20, 2023, https://www.opcw.org/sites/default/files/documents/2020/12/Statement%20by%20the%20Delegation%20of%20the%20Islamic%20Republic%20of%20Iran%20on%20draft%20decision%20on%202021%20Budget%20in%20the%20CSP%2025_0.pdf.

402 “2023 Condition (10)(C) Annual Report on Compliance with the Chemical Weapons Convention (CWC),” US Department of State, Bureau of Arms Control, Verification, and Compliance, April 18, 2023, <https://www.state.gov/2023-condition-10c-annual-report-on-compliance-with-the-chemical-weapons-convention-cwc/>.

403 “2023 Condition (10)(C) Annual Report on Compliance with the Chemical Weapons Convention (CWC).”

404 “Member States: the Islamic Republic of Iran,” Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/about-us/member-states/iran-islamic-republic>.

405 Chemical Weapons Convention, Article VIII (23); “Executive Council: The Governing Body of the OPCW,” Organisation for the Prohibition of Chemical Weapons, last visited June 19, 2023, <https://www.opcw.org/about-us/executive-council>.

406 Chemical Weapons Convention, Article VIII (23); “Executive Council: The governing body of the OPCW.”

407 “Executive Council: The Governing Body of the OPCW.”

408 Chemical Weapons Convention, Articles VIII (30)–(31). See also: *Ibid.*, Article VIII (32)–(36); “Executive Council: The Governing Body of the OPCW.”

409 Chemical Weapons Convention, Article VIII (29).

membership could be put under review. The Conference of the States Parties can review the composition of the Executive Council if the majority of the Executive Council requests it. When conducting such a review, the conference must take into account the aforementioned factors that determine membership.⁴¹⁰

Investigating Possible Uses of Chemical Weapons in Iran through the OPCW

There are several options available to other states parties to the CWC that wish to raise the matter of the possible poisonings of schoolgirls in Iran at the OPCW. When states parties are concerned that there has been a violation of the CWC, they can engage in consultation with the state or states parties alleged to have violated their obligations, request that the Executive Council get clarification about a particular situation, or request an onsite challenge inspection.⁴¹¹ The wording of Article IX of the CWC expresses a clear preference, though not a requirement, for states to first engage in voluntary efforts to resolve doubts about compliance with, or violation of, the Chemical Weapons Convention “whenever possible.”⁴¹² When one state party receives such a request for clarification from another state party, it has ten days to provide information about the matter to the requesting state party. The states parties can also arrange for an inspection by mutual consent.⁴¹³ Under this option, other states parties of the CWC could engage in discussions directly with the IRI to request information, or even arrange inspections or other procedures aimed at establishing whether chemical weapons are being used.

States parties may also turn to the Executive Council of the OPCW. They have the right to request that the Executive Council provide information it already holds about possible violations of the CWC, or to request that the Executive Council obtain clarification from other states parties.⁴¹⁴ Despite the IRI’s membership in the Executive Council, as noted above, it only gets one vote and decisions are made by a two-thirds majority, so it is not likely that the IRI would

be able to block requests for clarification. If the Executive Council makes a request for clarification, the state party that received the request has ten days to provide clarification.⁴¹⁵ The Executive Council must then forward that information to the state party that originally requested the clarification within twenty-four hours.⁴¹⁶ If that requesting state is still unsatisfied, it has the right to request that the Executive Council get further clarification.⁴¹⁷ In trying to get further clarification, the Executive Council may ask the director-general to form an expert group to examine the information and submit a factual report outlining its findings.⁴¹⁸ If even that is found to be unsatisfactory by the original requesting state party, it can request a special session of the Executive Council.⁴¹⁹ If the original requesting state party’s concerns have not been resolved within sixty days of its request to the Executive Council, it can request a special session of the Conference of the States Parties, which can consider the issue and make recommendations.⁴²⁰

Concerned states parties can also request challenge inspections, even without first directly engaging with the state where they think the CWC has been violated or seeking clarification through the Executive Council.⁴²¹ If a state party did not wish to engage with the IRI directly to request clarification of a particular situation—like the possible poisonings of schoolgirls—and did not want to involve the Executive Council given the IRI’s current membership, it could make use of this option and request an onsite challenge inspection anywhere in the territory of Iran by submitting an inspection request to both the Executive Council and the director-general.⁴²² It is the director-general who will determine whether the request meets the requirements for challenge inspections.⁴²³ The Executive Council can only block a request for a challenge inspection, not later than twelve hours after receipt of the request, by a three-fourths majority if it deems the request frivolous, abusive, or beyond the scope of the convention.⁴²⁴ Importantly, given the IRI’s role on the Executive Council, neither the requesting state nor the state party to be inspected can participate in that decision.⁴²⁵

410 Ibid., Article VIII (25).

411 Ibid., Article IX, Consultations, Cooperation and Fact-Finding.

412 Ibid., Article IX (2).

413 Ibid., Article IX (2).

414 Ibid., Article IX(3)–(4).

415 Ibid., Article IX(4)(b).

416 Ibid., Article IX(4)(c).

417 Ibid., Article IX(4)(d).

418 Ibid., Article IX(4)(e).

419 Ibid., Article IX(4)(f).

420 Ibid., Article IX(7).

421 Ibid., Article IX(8).

422 Ibid., Article IX(13).

423 Ibid., Article IX (14).

424 Ibid., Article IX (17).

425 Ibid., Article IX(17).



UN weapons inspectors enter the Organisation for the Prohibition of Chemical Weapons (OPCW) building after gathering evidence related to alleged chemical weapons use in Syria. Stringer via Reuters Connect

Nevertheless, there are limits to such requests. Any challenge inspection must be requested “for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of this Convention,” and the inspection is to be “conducted anywhere without delay by an inspection team designated by the Director-General.”⁴²⁶ Further, the CWC expressly designed this procedure to “avoid abuse” by requiring that the requesting state party “keep the inspection request within the scope of this Convention,” and “provide in the inspection request all appropriate information on the basis of which a concern has arisen.”⁴²⁷ States parties are cautioned to “refrain from unfounded inspection requests,” and that any inspection that takes place will “be carried out for the sole purpose of determining facts relating to the possible non-compliance.”⁴²⁸

The state party subject to the inspection must allow the inspection team to carry out its mandate and provide access to the requested sites, but it has the right to “take measures to protect sensitive installations, and to prevent disclosure of confidential information and data, not related to this Convention.”⁴²⁹ After the final report on factual findings and degree of access and cooperation during the inspection is transmitted by the director-general to all states parties and the Executive Council, the Executive Council reviews the report and evaluates whether there has been a violation of the CWC, and whether the initial request was within the scope of the convention or was an abuse of the right to request an inspection.⁴³⁰ Finally, the Executive Council can make recommendations it deems appropriate to the states parties or the Conference of the States Parties.⁴³¹

426 Ibid., Article IX(8).

427 Ibid., Article IX(9).

428 Ibid., Article IX(9).

429 Ibid., Article IX(11).

430 Ibid., Article IX(21)–(22).

431 Ibid., Article IX(23)–(25).

Should a state party not wish to pursue any of the above options, it can also bring the matter to the Conference of the States Parties.⁴³² The Conference of the States Parties consists of all members of the OPCW, and meets for regular sessions annually.⁴³³ The next Conference of the States Parties is scheduled to take place in The Hague from November 27 to December 1, 2023.⁴³⁴ The provisional agenda for each regular session is distributed no later than sixty days before the session is scheduled to begin, and any member of the OPCW may propose an item.⁴³⁵ The provisional agenda for the next Conference of the States Parties will be distributed no later than September 29, 2023. Finally, any state party can make a request to the director-general to convene a special session of the Conference of the States Parties, which is convened not later than thirty days after the request if at least one-third of the other states parties agree with the request.⁴³⁶

Recommendations

The following recommendations aim to give states parties to the CWC an overview of options available to them through the OPCW to get clarification on matters relating to the possible use of chemical weapons in the IRI, such as the suspected poisonings of schoolgirls across the country.

- Given the OPCW's strong preference for first seeking clarification from the state party where a situation of concern has arisen, states parties to the CWC could first directly reach out to the IRI to request information concerning the schoolgirl poisonings. However, such states should bear in mind the IRI's history of denial, its silencing of victims and journalists, and the ineffective investigation it has already carried out on this matter. Rather than simply seeking information from the IRI, states parties wishing to engage directly with

it could instead try to arrange an inspection or investigation to be conducted by an independent third party by mutual consent.

- States parties not wishing to engage directly with the IRI for the aforementioned reasons can instead request that the Executive Council provide any information it already holds and, if that does not suffice, they can request that the Executive Council seek clarification from the IRI. Despite the IRI's role on the Executive Council, it does not have veto power and cannot block decisions, as these are taken either by a two-thirds majority or a simple majority.
- States wishing to bypass the Executive Council clarification process altogether can directly request a challenge inspection anywhere on Iran's territory. They do not need to first seek clarification. They must, however, carefully frame the request to ensure it falls within the scope of the CWC, and provide all the information at their disposal that indicates noncompliance. Any inspection carried out by the team designated by the director-general will be strictly limited to establishing the facts surrounding the possible noncompliance with the Chemical Weapons Convention.
- Lastly, any state party can put the issue of the schoolgirl poisonings on the agenda for the next regular session of the Conference of the States Parties, scheduled to take place in The Hague from November 27 to December 1, 2023. Any state party can also request a special session of the Conference of States Parties, which will be convened if one-third of the member states support the request. The Conference of the States Parties has broad powers, and can discuss the matter and make recommendations for how to move forward.

432 Ibid., Article VIII(19).

433 Ibid., Article VIII(9), (11).

434 "Calendar: CSP-28—The Twenty-Eighth Conference of the States Parties," Organisation for the Prohibition of Chemical Weapons, last visited June 20, 2023, <https://www.opcw.org/calendar/2023/11/27/csp-28-twenty-eighth-conference-states-parties>.

435 "Conference of the States Parties Rules of Procedure," Organisation for the Prohibition of Chemical Weapons, last visited June 20, 2023, Rules 12, 13(c), <https://www.opcw.org/rules-procedure-conference-states-parties>.

436 Ibid., Rule 6.

Progressive Development of International Law

The previous sections of this report outline what is currently possible under existing international law—but the law is not static, and responses to ongoing human rights violations need not be limited to what has already been established. At the time of writing, there are several important initiatives under way that aim to expand existing international law to better respond to atrocity crimes and push accountability forward. This section covers two treaties under development: one to make international cooperation for domestic prosecutions of international crimes more efficient, and another to create an international convention for crimes against humanity. These efforts, if successful, will fill important gaps in substantive and procedural international law, and can be used to address the impunity gap in Iran. Lastly, this section briefly covers recent developments in the nascent, but growing, recognition by the international community of gender apartheid as a standalone international crime.

Treaties

Treaties are one of the primary sources of international law, and one of the most important ways states shape the rules that bind the international community.⁴³⁷ Two treaties currently under development seek to push accountability for international crimes even further—one relating to better coordination between states for national prosecutions of international crimes, and the other to building a legal framework specifically for crimes against humanity. These treaties have been in the works for more than a decade and have finally reached critical stages. If supported by enough states, these treaties could soon become law, whether supported by the IRI or not. Even if Iran does not adopt these treaties, they would nevertheless oblige other

states to take accountability measures that would apply to any suspected perpetrators on their territory. Furthermore, treaties like these contribute to the development and recognition of customary international law and obligations that apply to all states, regardless of which treaties they have adopted.

Mutual Legal Assistance and Extradition Initiative

There has been a significant increase in national prosecutions for international crimes in recent years.⁴³⁸ At the same time, experts recognize that the current framework for mutual legal assistance and extradition is inadequate when it comes to national prosecutions for genocide, crimes against humanity, and war crimes.⁴³⁹ The Netherlands, Belgium, and Slovenia convened an expert meeting in The Hague in 2011 to address this coordination gap in national prosecutions of core international crimes, from which the Mutual Legal Assistance and Extradition Initiative (the “MLA Initiative”) emerged. This core group of states later expanded to include Argentina, Senegal, and Mongolia.⁴⁴⁰

More than ten years after work began on the MLA Initiative, a diplomatic conference took place in Slovenia in May 2023 to facilitate negotiations between states for the adoption of the Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and Other International Crimes (the “Ljubljana-Hague Convention”).⁴⁴¹ At the outset of the conference, the MLA Initiative had already garnered the official support of eighty countries.⁴⁴²

On May 26, 2023, the more than seventy states gathered at the diplomatic conference adopted the Ljubljana-Hague Convention, hailed as a historic moment by many

437 See, e.g.: Statute of the International Court of Justice, Article 38. See also: Christopher Greenwood, “Sources of International Law: An Introduction,” United Nations, 2008, https://legal.un.org/avl/pdf/lis/Greenwood_outline.pdf#:~:text=Treaties%20sometimes%20called%20agreements%2C%20conventions%2C%20exchanges%20of%20notes,much%20as%20a%20source%20of%20obligation%20under%20law.

438 See, e.g.: “2022 Highlights in the Universal Jurisdiction Annual Review (UJAR 2023),” TRIAL International, April 24, 2023, <https://trialinternational.org/latest-post/2022-highlights-in-the-universal-jurisdiction-annual-review-ujar/>; “At a Glance: Universal Jurisdiction in EU Member States,” EuroJust, May 23, 2023, <https://www.eurojust.europa.eu/publication/glance-universal-jurisdiction-eu-member-states>; Máximo Langer and Mackenzie Eason, “The Quiet Expansion of Universal Jurisdiction,” *European Journal of International Law* 30, 3 (2019), 779–817, <https://doi.org/10.1093/ejil/chz050>.

439 See: “MLA Initiative,” Kingdom of the Netherlands, last visited June 2, 2023, <https://www.centruminternationaalrecht.nl/mla-initiative>; “MLA (Mutual Legal Assistance and Extradition) Initiative,” Republic of Slovenia, June 2, 2023, <https://www.gov.si/en/registries/projects/mla-initiative>.

440 “MLA (Mutual Legal Assistance and Extradition) Initiative.”

441 “Largest Diplomatic Conference on International Law in Slovenian History Opens,” Republic of Slovenia, May 15, 2023, <https://www.gov.si/en/news/2023-05-15-largest-diplomatic-conference-on-international-law-in-slovenian-history-opens/>.

442 “Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes: Supporting States as of 12/5/2023,” Republic of Slovenia, May 12, 2023, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/MLA-Initiative-List-of-Supporting-States-English.pdf>.



A protestor holds a sign saying “Stand With the Women of Iran” during a solidarity demonstration in memory of Mahsa Jina Amini in Krakow, Poland. Beata Zawrzal via Reuters Connect

of the states involved, including representatives from the core group of states behind the MLA Initiative.⁴⁴³ The Ljubljana-Hague Convention will open for signatures in the first half of 2024 at the Peace Palace in The Hague.⁴⁴⁴ The convention requires three ratifications to enter into force. The Netherlands will be the secretariat in the interim, but Belgium will be the depositary of the Ljubljana-Hague Convention.⁴⁴⁵ If the convention becomes binding, it will be the first multilateral treaty ever to deal with mutual legal assistance for national prosecutions of international crimes.⁴⁴⁶

The adoption of the convention was also praised by civil society, with organizations noting the expansion of victim rights in the final text, emphasis on fair-trial rights for the accused, elimination of many statutes of limitations, and the treatment of the duty of states to prosecute or extradite those suspected of the covered crimes, which include certain crimes in non-international armed countries.⁴⁴⁷ The Ljubljana-Hague Convention also includes provisions on Joint Investigation Teams, restitution, information exchange, and privacy.⁴⁴⁸ On the other hand, Amnesty

443 See, e.g.: “The Ljubljana-Hague Convention Adopted,” Republic of Slovenia, May 26, 2023, <https://www.gov.si/en/news/2023-05-26-the-ljubljana-hague-convention-adopted/>; “A New Treaty to Enable Cooperation between States in the Fight against Impunity for the Most Serious Crimes, Thanks to Belgium’s Efforts,” Kingdom of Belgium, May 27, 2023, <https://diplomatie.belgium.be/en/news/new-treaty-enable-cooperation-between-states-fight-against-impunity-most-serious-crimes-thanks-belgiums-efforts>.

444 “Overeenstemming over Nieuw Verdrag om Internationale Misdrijven Beter aan te Pakken [Agreement on New Treaty to Better Tackle International Crimes],” Kingdom of the Netherlands, May 26, 2023, <https://www.rijksoverheid.nl/actueel/nieuws/2023/05/26/overeenstemming-over-nieuw-verdrag-om-internationale-misdrijven-beter-aan-te-pakken>; “MLA (Mutual Legal Assistance and Extradition) Initiative.”

445 “Overeenstemming over Nieuw Verdrag om Internationale Misdrijven Beter aan te Pakken.”

446 “Mutual Legal Assistance Initiative Information Sheet,” REDRESS, last visited June 2, 2023, <https://redress.org/wp-content/uploads/2023/05/2023-03-24-MLA-Initiative-Info-Sheet.pdf>.

447 “Global: States Agree Landmark Treaty to Help Deliver Justice to Victims of Genocide, Crimes against Humanity and War Crimes,” Amnesty International, May 26, 2023, <https://www.amnesty.org/en/latest/news/2023/05/global-states-agree-landmark-treaty-to-help-deliver-justice-to-victims-of-genocide-crimes-against-humanity-and-war-crimes/>.

448 “Overeenstemming over Nieuw Verdrag om Internationale Misdrijven Beter aan te Pakken.”

International lamented that states like France succeeded in getting an exemption and discretion for states regarding the decision to investigate or prosecute suspects present on their territory, instead of including this as an obligation.⁴⁴⁹ Despite this carveout, Amnesty International recognized that the core principles were nevertheless respected, and urged states to ratify the convention without reservations.⁴⁵⁰

Draft Articles on Crimes Against Humanity

After years of languishing, a similar process on a treaty on crimes against humanity is also finally under way.⁴⁵¹ This treaty has long been called for, as it would close existing gaps in international law; currently, there is no treaty dedicated to crimes against humanity, nor do other treaties on international crimes impose a duty to prevent crimes against humanity.⁴⁵² As an MLA Initiative explainer notes, the absence of “specific and adequate international standards on crimes against humanity hampers effective and efficient investigation and prosecution of these crimes.”⁴⁵³

A resolution adopted by the UNGA in December 2022 kicked off a two-year process for negotiations and deliberations on the International Law Commission’s recommendations on draft articles on prevention and punishment of crimes against humanity.⁴⁵⁴ The ILC began its work on a treaty on crimes against humanity in 2014.⁴⁵⁵ It adopted the draft articles on crimes against humanity (CAH Draft

Articles) in 2019.⁴⁵⁶ It ultimately recommended to the UNGA that it develop an international convention based on those articles.⁴⁵⁷

The UN’s Sixth Committee, the UNGA’s dedicated body for considering legal questions, concluded its session on the question of whether to codify the ILC’s CAH Draft Articles on April 14, 2023.⁴⁵⁸ Despite different views on specifics, delegates appeared to agree, for the most part, on how important it is for national legal systems to criminalize, punish, and prevent crimes against humanity.⁴⁵⁹ However, important points of discrepancy include the question of whether the definition under this new treaty should be consistent with the Rome Statute or whether, given that the Rome Statute does not have universal acceptance, a consistent definition could result in fewer states accepting the new treaty.⁴⁶⁰ States also disagreed about whether prohibition of crimes against humanity constitutes a *jus cogens* norm—that is, a fundamental rule of international law that applies to everyone.⁴⁶¹

Now that the session has concluded, the Sixth Committee will meet again in October 2023 to debate the CAH Draft Articles during its normal session, and states may then submit written comments by December 31, 2023.⁴⁶² In April 2024, the Sixth Committee will meet again for a session dedicated to the CAH Draft Articles and, in October 2024, it will make a final decision regarding the ILC’s recommendation to develop a treaty based on them.⁴⁶³ The

449 “Global: States Agree Landmark Treaty to Help Deliver Justice to Victims of Genocide, Crimes against Humanity and War Crimes”; “Global: French Government Tries to Weaken New Treaty in Way that Could Allow War Criminals to Escape Justice,” Amnesty International, May 22, 2023, <https://www.amnesty.org/en/latest/news/2023/05/global-french-government-tries-to-weaken-new-treaty-in-way-that-could-allow-war-criminals-to-escape-justice/>.

450 “Global: States Agree Landmark Treaty to Help Deliver Justice to Victims of Genocide, Crimes against Humanity and War Crimes.”

451 See: Leila Nadya Sadat and Akila Radhakrishnan, “Crimes Against Humanity: Little Progress on Treaty as UN Legal Committee Concludes its Work,” Just Security, December 7, 2021, <https://www.justsecurity.org/79415/crimes-against-humanity-little-progress-on-treaty-as-un-legal-committee-concludes-its-work/>; Leila Nadya Sadat and Akila Radhakrishnan, “Coming Debates to Advance New Treaty on Crimes Against Humanity Will Require Skillful Leadership,” Just Security, December 20, 2022, <https://www.justsecurity.org/84496/coming-debates-to-advance-new-treaty-on-crimes-against-humanity-will-require-skillful-leadership/>; Leila Nadya Sadat and Akila Radhakrishnan, “Differences ‘Getting Narrower’ on Proposed Crimes Against Humanity Treaty,” Just Security, May 15, 2023, <https://www.justsecurity.org/86582/differences-getting-narrower-on-proposed-crimes-against-humanity-treaty/>.

452 Sadat and Radhakrishnan, “Coming Debates to Advance New Treaty on Crimes Against Humanity Will Require Skillful Leadership.”

453 “The Relationship of the MLA Initiative to the ILC Draft Articles on Crimes against Humanity,” Republic of Slovenia, June 2, 2023, <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/Relationship-between-the-ILC-and-MLA-Initiative-English.pdf>.

454 United Nations General Assembly, “Resolution Adopted by the General Assembly on 30 December 2022,” A/RES/77/249, January 9, 2023, <https://undocs.org/A/RES/77/249>. See also: Sadat and Radhakrishnan, “Coming Debates to Advance New Treaty on Crimes Against Humanity Will Require Skillful Leadership”; “Draft Articles on Prevention and Punishment of Crimes Against Humanity: Adopted by the International Law Commission at Its Seventy-First Session, in 2019, and Submitted to the General Assembly as a Part of the Commission’s Report Covering the Work of that Session (A/74/10),” International Law Commission, 2019, https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf.

455 “Codifying Draft Articles on Crimes against Humanity into International Convention Entirely in Hands of Member States, Senior Legal Officer Tells Sixth Committee,” United Nations, April 13, 2023, <https://press.un.org/en/2023/gal3682.doc.htm>.

456 “Draft Articles on Prevention and Punishment of Crimes Against Humanity.”

457 “Codifying Draft Articles on Crimes against Humanity into International Convention Entirely in Hands of Member States, Senior Legal Officer Tells Sixth Committee.”

458 “Sixth Committee Concludes Resumed Session on Whether to Codify International Law Commission’s Crimes against Humanity Draft Articles,” *UN News*, April 14, 2023, <https://press.un.org/en/2023/gal3683.doc.htm>. See also: “Sixth Committee (Legal),” United Nations, last visited June 2, 2023, <https://www.un.org/en/ga/sixth/index.shtml>.

459 “Sixth Committee Concludes Resumed Session on Whether to Codify International Law Commission’s Crimes against Humanity Draft Articles.”

460 *Ibid.*; Sadat and Radhakrishnan, “Differences ‘Getting Narrower’ on Proposed Crimes Against Humanity Treaty.”

461 Sadat and Radhakrishnan, “Differences ‘Getting Narrower’ on Proposed Crimes Against Humanity Treaty.”

462 *Ibid.*

463 *Ibid.*



Demonstrators gathered outside Downing Street in protest against executions in Iran and in support of freedom for Iran. Vuk Valcic /SOPA Images/Sipa USA

timeline for this treaty is longer than that for the Ljubljana-Hague Convention, but adopting a multilateral framework on crimes against humanity would only bolster national jurisdictions' ability to criminalize, punish, and set out obligations for the prevention of crimes against humanity, a clear complementary base to any mutual legal assistance in the prosecution of these crimes.

Iran's Position on These Treaties

The IRI has not expressed support for the MLA Initiative, nor did it participate in the diplomatic conference that

took place in May 2023.⁴⁶⁴ However, the Ljubljana-Hague Convention includes an *aut dedere, aut judicare* obligation, meaning that states parties must either extradite or prosecute persons suspected of having committed genocide, crimes against humanity, or war crimes present on their territory, subject to the conditions specified in the convention.⁴⁶⁵ Given the lack of action or statements, and the possible consequences for IRI officials traveling to possible future states parties, it is unlikely that the IRI would sign or ratify this treaty. Nonetheless, if the convention enters into force, then all states that ratify it will have this obligation. This means any IRI officials suspected of having

464 The country has not signed up as a supporting state, nor did it send any delegates to the conference. See: "Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes: Supporting States as of 12/5/2023," Republic of Slovenia, May 12, 2023, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/MLA-Initiative-List-of-Supporting-States-English.pdf>; "MLA Diplomatic Conference: List of Participants," Republic of Slovenia, May 26, 2023, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/List-of-Participants.pdf>.

465 The obligation to prosecute or extradite, under Article 14, is conditional on the jurisdiction clauses under Article 8 of the Convention. Article 8 requires states to establish jurisdiction over cases where the crime was committed in its territory, by one of its nationals, or where the suspect is physically present on its territory and the state does not extradite that suspect to another state party or surrender that person to a competent international tribunal. Under Article 8, jurisdiction over cases where the alleged perpetrator is a stateless person or the victim is a national of the state in question is optional. "Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes," Republic of Slovenia, May 26, 2023, Articles 8, 14, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/The-Ljubljana-The-Hague-MLA-Convention.pdf>.

committed the covered crimes could be prosecuted if they are found to be present on the territory of states that ratify the convention.

When it comes to the CAH Draft Articles, on the other hand, the IRI has been very active. Delegates from the IRI have argued, for example, that of the principles found in the UN Charter, the most relevant one for the CAH Draft Articles is that of nonintervention, and have criticized the draft for not “adequately” incorporating general international law principles of immunity of state officials and of states and their property.⁴⁶⁶ For reference, the current draft requires states to ensure that, under their domestic criminal law, “the fact that an offence referred to in this draft article was committed by a person holding an official position is not a ground for excluding criminal responsibility.”⁴⁶⁷ IRI delegates also criticized the current wording of the articles on refusing extradition requests, and critiqued the “unsuccessful attempt” to extend the “international human rights law” principle of non-refoulement to crimes against humanity.⁴⁶⁸ Tellingly, the IRI delegate also criticized the definition of crimes against humanity for being too “broad,” while simultaneously not “encompass[ing] all acts that can be considered crimes against humanity,” notably, like “the imposition of unilateral coercive measures against civilians to intentionally facilitate their suffering and dissatisfaction with their Governments.”⁴⁶⁹ The delegate also stressed that the “critical invisible role of external players—particularly foreign States—cannot be overlooked,” and urged that the text should be amended to address “the obligations of States not to intervene in the internal affairs of other States that result in crimes against humanity.”⁴⁷⁰

It is too early to speculate about what the final text of any treaty on crimes against humanity would look like. However, given the negative and contradictory tone of the statements IRI representatives have made so far, and its history of not adopting similar treaties, it seems unlikely the IRI would adopt any future treaty on crimes against humanity. That does not mean its officials would necessarily be beyond the reach of other jurisdictions. As mentioned above, a crimes against humanity convention would provide a basis for national legislation to enact legal standards to prevent, criminalize, and punish crimes against humanity. Any national jurisdiction could then apply its existing jurisdiction rules on international crimes

to either prosecute or extradite suspects present on its territory—even if these persons are nationals of a state like Iran that may not be party to international conventions on the matter.

With respect to the substance of the CAH Draft Articles, two changes will assist with holding IRI officials accountable. First, the definition of the crime against humanity of enforced disappearance in the CAH Draft Articles should be revised to match the definition included in the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which does not require a specific duration of time nor an intention to remove a disappeared person from the protection of law enforcement. These requirements unduly narrow the definition of this crime, and are not in line with the ICPPED. Given the frequency with which the IRI is now deploying enforced disappearance as a tactic to silence dissidents, this change would be beneficial to accountability efforts. Second, the definition of the crime against humanity of forced pregnancy should be revised to remove the caveat that exempts national laws, the only crime for which such a caveat is included. This kind of caveat permits discrimination against women to continue when codified under national legislation. In the case of the IRI’s national laws, which allow permissions for nonconsensual sexual relations that are not in accordance with international standards, removing this caveat would help victims and survivors of this crime.

Recommendations

- States should sign and ratify the Ljubljana-Hague Convention without reservations.
- States should additionally, at the time of ratification or acceptance, voluntarily extend the scope of the application of the Ljubljana-Hague Convention to cover crimes like torture or enforced disappearances, to ensure prosecutions of other serious international crimes also benefit from this convention.
- States should take measures necessary to establish jurisdiction over cases where the victim of a covered crime is a national—that is, to establish passive personality jurisdiction. The IRI often targets dual nationals, and this jurisdiction would allow states to protect

466 “Speakers Argue over Codifying International Law Commission Draft Articles on Crimes against Humanity, as Sixth Committee Resumes Session,” UN Meetings Coverage and Press Releases, April 10, 2023, <https://press.un.org/en/2023/gal3679.doc.htm>.

467 “Draft Articles on Prevention and Punishment of Crimes Against Humanity,” Article 6 (5),.

468 “Codifying Draft Articles on Crimes against Humanity into International Convention Entirely in Hands of Member States, Senior Legal Officer Tells Sixth Committee.”

469 “Delegates Grapple with Definition of Crimes against Humanity That Supports Future Development, Has Legal Certainty, as Sixth Committee Continues Resumed Session,” UN Meetings Coverage and Press Releases, April 11, 2023, <https://press.un.org/en/2023/gal3680.doc.htm>.

470 Ibid.

their nationals even when they are the victims of crimes outside their territory.⁴⁷¹

- Should the treaty be ratified, states parties should comply with their obligations to prosecute or extradite perpetrators from the IRI suspected of having committed the covered crimes in good faith, and not abuse the discretion included in the final draft to avoid politically difficult cases.
- States should accept the ILC's recommendation to develop a treaty based on the CAH Draft Articles.
- The definition of the crime against humanity of enforced disappearance in the CAH Draft Articles should be revised to match the definition included in the ICCPD, which does not require a specific duration of time, nor an intention to remove a disappeared person from the protection of law enforcement. These requirements unduly narrow the definition of this crime and are not in line with the ICCPD.
- The definition of the crime against humanity of forced pregnancy should be revised to remove the caveat that exempts national laws, as it is the only crime for which such a caveat is included. This kind of caveat permits discrimination against women to continue when codified under national legislation.

Developing Law

While treaties provide a source of law that is easily identifiable, there are other important sources of international law, such as customary international law or general principles of international law recognized by the international community, that gradually develop over time.⁴⁷² These customs and practices may eventually be codified in treaties, but they become binding on the international community once

they are widely recognized. One current important ongoing development is the recent, but growing, recognition of the standalone crime of gender apartheid, especially as it relates to what is happening to women in the IRI and Afghanistan.

Gender Apartheid

In the clearest terms possible, the UN Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett, and the Working Group on discrimination against women and girls concluded in their June 2023 report to the HRC that the Taliban's treatment of women and girls in Afghanistan constitutes gender apartheid.⁴⁷³ In their words, "[t]he pattern of large-scale systematic violations of women's and girls' fundamental rights in Afghanistan, abetted by the Taliban's discriminatory and misogynistic policies and harsh enforcement methods, constitutes gender persecution and an institutionalized framework of gender apartheid."⁴⁷⁴ The Special Rapporteur, however, acknowledged that gender apartheid is not currently an international crime.⁴⁷⁵ The current definition of the crime against humanity of apartheid only encapsulates discrimination based on race.⁴⁷⁶

Because the current definition of apartheid under international criminal law does not cover systematic oppression based on gender, the kind of systematic discriminatory treatment women face in the IRI and Afghanistan cannot be prosecuted as apartheid. Under existing law, there are few options for prosecuting this kind of oppression. Two currently available options to prosecute these actions are as the crime against humanity of gender persecution or possibly as the "other inhumane acts" subcategory of crimes against humanity.⁴⁷⁷ The Rome Statute defines the crime against humanity of persecution as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."⁴⁷⁸ It defines other inhumane acts as "acts of a

471 See, e.g.: "Iran: Targeting of Dual Citizens, Foreigners," Human Rights Watch, September 26, 2018, <https://www.hrw.org/news/2018/09/26/iran-targeting-dual-citizens-foreigners>; Nadeen Ebrahim, "How Dual Nationals Became Pawns in Iran's Fight with the West," CNN, March 21, 2022, <https://edition.cnn.com/2022/03/21/middleeast/mideast-summary-03-21-2022-intl/index.html>.

472 See, e.g., Statute of the International Court of Justice, Article 38.

473 United Nations Human Rights Council, "Situation of Women and Girls in Afghanistan: Report of the Special Rapporteur on the Situation of human rights in Afghanistan and the Working Group on Discrimination against Women and Girls (Advance edited version)," paragraph 96, A/HRC/53/21, June 20, 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>.

474 Ibid.

475 "Taliban Treatment of Women Could Be 'Gender Apartheid,' UN Expert Says," Reuters, June 20, 2023, <https://www.reuters.com/world/asia-pacific/talibans-treatment-women-could-be-gender-apartheid-un-expert-2023-06-19/>.

476 International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II, November 30, 1973, 1015 UNTS 243; Rome Statute, Article 7(2)(h). See also: Karima Bennouna, "The Best Way to Mark the Anniversary of Taliban Takeover? Launch a Global Campaign Against Gender Apartheid in Afghanistan," Just Security, August 12, 2022, <https://www.justsecurity.org/82651/the-best-way-to-mark-the-anniversary-of-taliban-takeover-launch-a-global-campaign-against-gender-apartheid-in-afghanistan/>; Karima Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, 1 (2022), 17–24, <https://hrllaw.columbia.edu/files/2022/12/Bennouna-Finalized-12.09.22.pdf>.

477 See, e.g.: Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," 54.

478 Rome Statute, Article 7(2)(g).



Richard Bennett, Special Rapporteur on the situation of human rights in Afghanistan, attends a news conference in Kabul, Afghanistan. ALI KHARA via Reuters Connect

similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”⁴⁷⁹

If these categories already exist, why try to expand the definition of apartheid? The Campaign to End Gender Apartheid—a group of Iranian and Afghan legal experts, activists, and global women leaders dedicated to expanding the definition of apartheid to include gender—addresses this exact question. It points out that first, recognizing gender apartheid as a crime would be an important tool for identifying and ending regimes of gender apartheid; second, when race is replaced by gender in the definition of apartheid, it accurately captures the nature of the systemic discrimination as a tool of dominion and power by the Taliban and the Islamic Republic.⁴⁸⁰ Special Rapporteur

Bennett expressed a similar sentiment, saying that “if one applies the definition of apartheid, which at the moment is for race, to the situation in Afghanistan and use sex instead of race, then there seem to be strong indications pointing towards that.”⁴⁸¹ Additionally, Karima Bennouna, a professor of law and one of the first legal scholars to address the issue in depth, writes that “the persecution approach fails to adequately implicate the institutionalized and ideological nature of the abuses in question or reflect on the responsibilities of other international actors to respond appropriately.”⁴⁸²

Recognition of gender apartheid by UN officials like Special Rapporteur Bennett or EU representatives like High Representative Josep Borrell is an important

479 Ibid., Article 7(1)(k).

480 “FAQs,” End Gender Apartheid, last visited June 21, 2023, <https://endgenderapartheid.today/>.

481 “Taliban Treatment of Women Could Be ‘Gender Apartheid,’ UN Expert Says.”

482 Bennouna, “The International Obligation to Counter Gender Apartheid in Afghanistan,” 55.

milestone in making gender apartheid a crime.⁴⁸³ But that is not enough—customary international law consists of state practice and, *opinio juris*, the belief that an act is required by law.⁴⁸⁴ Different actors in the international community, especially states, must recognize the crime of gender apartheid, support its codification and prosecution, and take steps to dismantle regimes responsible for implementing it. Options already exist, such as the argument presented by Bennoune that the existing law on apartheid be directly applied to gender apartheid.⁴⁸⁵ In a forward-looking suggestion, Special Rapporteur Bennett and the Working Group on discrimination against women and girls recommend that UN member states mandate a report on gender apartheid to develop norms on the issue.⁴⁸⁶ As the situation deteriorates for women and girls in Afghanistan and the IRI, as well as other countries with similarly codified regimes of oppression, now is the time for the international community to act.

Recommendations

- UN member states should accept the recommendation from Special Rapporteur Bennett and the

Working Group on discrimination against women and girls, and mandate a report on the question of gender apartheid with a view to develop legal norms for the international community.

- Other avenues for developing legal norms around the crime of gender apartheid should be pursued, such as adding it to the work of the International Law Commission and including the crime in the CAH Draft Articles.
- States should incorporate the rights of women and girls, and the dismantling of the regimes of gender apartheid, into their foreign policies regarding the IRI and Afghanistan.
- States can also incorporate the crime of gender apartheid into domestic legislation.
- Civil society should continue to document the acts constituting gender apartheid, and push its national representatives to take action.

483 See, e.g.: “Afghanistan: Taliban ‘May Be Responsible for Gender Apartheid’ Says Rights Expert,” *UN News*, June 19, 2023, <https://news.un.org/en/story/2023/06/1137847>; “United Nations: Press Remarks by High Representative/Vice-President Josep Borrell After His Address at the UN Security Council,” European Union External Action Service, February 23, 2023, https://www.eeas.europa.eu/eeas/united-nations-press-remarks-high-representativevice-president-josep-borrell-after-his-address_en (“In Afghanistan, where we will not tolerate the ‘gender apartheid’ that the Taliban regime is installing. It is a real ‘gender apartheid.’”).

484 See, e.g., an overview of developments in the ICJ’s jurisprudence on determining unwritten sources of international law: H.E. Mr. Abdulqawi Ahmed Yusuf, “The International Court of Justice and Unwritten Sources of International Law,” Statement Before the Sixth Committee of the General Assembly, November 1, 2019, <https://www.icj-cij.org/public/files/press-releases/0/000-20191101-STA-01-00-EN.pdf>.

485 Karima Bennoune, “The International Obligation to Counter Gender Apartheid in Afghanistan,” 82.

486 HRC Resolution 53/21 (2023), paragraph 100.

Conclusion

If the international community wants to show solidarity with the people of Iran, and take action to hold perpetrators of atrocity crimes and human rights violations responsible—especially in light of the current crackdown and latest human rights abuses—international mechanisms offer a pathway to accountability, but require political will and consensus. States should continue to take action domestically at the national level to ensure that all available options are pursued, but steps taken at the international

level convey a powerful message that the international community as a whole will not ignore the IRI's gross human rights violations. National and international tools can complement each other and, if used in conjunction, allow for a more comprehensive and impactful approach to seeking justice. As the people of Iran continue to publicly demand change, the international community can support them by utilizing all the tools at its disposal to bring the IRI to account.

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